Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-536

NASHVILLE GAS COMPANY,
Petitioner,

vs.

NORA D. SATTY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 7, 1975
CERTIORARI GRANTED JANUARY 25, 1977

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil Action No. 74-288-NA-CV

NORA D. SATTY,

vs.

NASHVILLE GAS COMPANY,
Defendant.

RELEVANT DOCKET ENTRIES

	Date of Filing
Complaint	July 1, 1974
Affidavit of Elmer L. Henson Jr.	July 9, 1974
Order	July 10, 1974
Employee Policy Manual, Sick Leave and Pregnancy Leave Sections	July 10, 1974
Schedule of Salary Rates	July 10, 1974
Handwritten Letter of May 10, 1973	July 10, 1974
Answer	July 22, 1974
Answers to Plaintiff's Interrogatories	August 23, 1974
Stipulation of Facts	August 27, 1974
Pre-Trial Order	August 28, 1974
Typed Letter of May 10, 1973	September 5, 1974
Memorandum	November 4, 1974
Stipulations	November 20, 1974
Order	November 20, 1974
Office Court Reporter's Transcript	December 23, 1974

(Caption Omitted)

COMPLAINT

(Filed July 1, 1974)

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1343(4) and 42 U.S.C. Section 2000 E-5 (F). This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964", 78 Stat. 253 (42 U.S.C. Section 2000 E *et seq.*), Public Law Number 92-261, 86 Stat. 103 (March 24, 1972), hereinafter referred to as "Title VII".

2. The unlawful employment practices alleged below were and are being committed within the Middle District of the State of Tennessee.

3. Plaintiff, Nora D. Satty, is a female citizen of the United States and a resident of Goodlettsville in the State of Tennessee. Plaintiff was employed by Defendant, Nashville Gas Company, on March 24, 1969 and was employed continuously from that date to December 29, 1972.

4. Defendant Nashville Gas Company is a corporation doing business in the State of Tennessee, in the City of Nashville. The Company operates and maintains plants and offices and is an employer within the meaning of Section 701(B) of Title VII in that the Company is engaged in an industry effecting commerce and employs and has employed the requisite number of persons during all relevant times.

5. Plaintiff brings this action on behalf of herself and all other female persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class which Plaintiff represents is composed of female persons who are now employed, or who were employed, or

who might have become employed, or who might become employed by Nashville Gas Company at its plants or offices since July 2, 1965, and who have been, and continue to be or might be adversely effected by the practices complained of herein.

There are common questions of law in fact effecting the rights of the members of this class who are, were and continue to be limited, classified and discriminated against in ways which deprived them of equal employment opportunities and otherwise adversely affect their status as employees because of their sex. These common questions predominate over any questions effecting only individual members of this class. These persons are so numerous that joinder of all members is impractical. Common relief is sought. The interest of said class are adequately represented by Plaintiff. Defendants have acted or refused to act on grounds generally applicable to the class. The class action is superior to other available methods for the fair and efficient adjudication of this controversy.

6. A charge of Employment Discrimination was filed against the corporation Defendant on or about September 13, 1973 by Nora D. Satty, Plaintiff herein.

7. On April 5, 1974 Plaintiff received a "NOTICE OF RIGHT TO SUE" from the Birmingham District Office of the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, entitling her to institute a civil action in the appropriate Federal District Court within 90 days of the date of receipt of said notice.

8. On December 29, 1972, Plaintiff, Nora D. Satty, was forced to leave her employment with the Defendant on the instructions of Mr. Elmer Henson, Personnel Director of Defendant, because of her pregnancy, although Plaintiff's physician had not advised her to cease employment at that time.

9. During her absence due to her pregnancy, Plaintiff was not paid sick-pay benefits to which she would have been entitled if she had been absent due to other types of illnesses or disabilities pursuant to the Defendant's policy as stated in its Employee Policy Manual. Further, Plaintiff's expenses of pregnancy were not as fully covered by Defendant's group insurance policy as were other illnesses and disabilities.

10. On or about March 7, 1973, Plaintiff was asked to return to work for Defendant. Upon returning to her employment Plaintiff learned that she was no longer considered a full-time employee of Defendant but rather was considered a temporary employee. Further, Plaintiff learned that she would be paid at the rate of pay for beginning employees even though she was earning $17.00 per week more in seniority raises prior to December 29, 1972.

11. As a result of Plaintiff's being employed as a part-time employee, the Defendant failed and refused to consider her application for job openings for which she was qualified and to which she would have been entitled had not she lost her seniority as a result of her pregnancy.

12. When Plaintiff complained to Defendant about her status as a temporary employee and the failure of Defendant to place her in any full-time jobs for which she had applied, the Plaintiff was terminated as an employee of Defendant in violation of Section 704, Title VII.

13. The aforementioned practices of Defendant are in violation of Section 703, Title VII and the Defendant has followed and continues to follow its policy and practice of discrimination against its employees and applicants for employment because of their sex in violation of Section

703, Title VII. The discriminatory practices and policies include, but are not limited to, the following:

(a) Failing and refusing to hire females on an equal basis with men at a rate of pay equal to that paid to men;

(b) Establishing and maintaining job classifications which result in the exclusion of females because of their sex from jobs and job opportunities for which they are otherwise qualified and for which sex is not a bona fide occupational qualification;

(c) Failing and refusing to provide training for females because of their sex for positions for which sex is not a bona fide occupational qualification;

(d) Failing and refusing to promote females because of their sex to positions for which sex is not a bona fide occupational qualification;

(e) Failing and refusing to pay females on an equal basis with men for substantially equal work;

(f) Establishing and maintaining a sick leave plan which is applied to disability due to pregnancy, miscarriage, abortion, childbirth and recovery therefrom on different terms and conditions than are applied to other types of temporary disability.

(g) Establishing and maintaining written and unwritten policies which apply different terms and conditions to the maintenance and accrual of seniority during leave from employment due to pregnancy, miscarriage, abortion, childbirth and recovery therefrom than are applied to the maintenance and accrual of seniority during leave due to other types of temporary disability.

(h) Establishing and maintaining group health and temporary disability insurance plans which are applied to disability due to pregnancy, miscarriage, abortion, childbirth and recovery therefrom on different terms and conditions than are applied to other types of temporary disability.

(i) Establishing and maintaining a policy of a mandatory minimum period of leave from employment which is solely applied to disability due to pregnancy.

(j) Establishing and maintaining a policy of reinstating former full time employees on a part time basis upon their return to work from a disability due to pregnancy, miscarriage, abortion, childbirth and recovery therefrom while reinstating former full time employees on a full time basis upon their return from other types of disability.

(k) Establishing and maintaining a policy of the retaliatory dismissal of employees who assert their rights under Title VII.

(l) Failing and refusing to take affirmative actions to correct the effects of the discriminatory policies and practices complained of herein.

9. The effect of the policies and practices pursued by the defendant as alleged above have been and continue to be to limit, segregate, classify and discriminate against the female workers at Nashville Gas Company in ways which jeopardize the jobs of and continue to deprive the said female workers of employment opportunities otherwise adversely effect their status as employees because of their sex in violation of Title VII.

10. As a further result of the Defendants' above stated actions, the Plaintiff and the class she represents

who are employed or were employed or who might have been employed or might become employed by Defendant corporation have been and are being deprived of income in the form of wages and of prospective retirement benefits, social security and other benefits due to them as workers solely because of their sex in the sum to be proven at the trial.

In addition, Plaintiff and the class she represents have no plain, adequate or complete remedy at law to correct the practices alleged herein and this suit for injunctive relief is the only means of securing adequate relief. The Plaintiff and the class she represents are now suffering and will continue to suffer irreparable injury from the Defendants' policies, practices, customs, and usages as set forth herein.

11. Plaintiff is entitled to recover reasonable attorneys' fees for the services of her attorneys in these proceedings as provided for in Section 706 (k) of Title VII.

WHEREFORE, Plaintiff respectfully prays this Court to:

1. Grant Plaintiff a preliminary injunction requiring the Defendant to reinstate plaintiff as an employee with all her seniority rights and privileges and enjoining defendant, its officers, agents, successors, and employees, attorneys, assigns and other representatives, and all those acting in concert with it and at its direction from terminating Plaintiff's and the class she represents employment and from harassing her and the class she represents or from retaliating against her and the class she represents for asserting their rights under Title VII;

2. Grant Plaintiff and the class she represents a permanent injunction enjoining the Defendant Nashville Gas

Company, its officers, agents, successors, employees, attorneys, assigns and other representatives, and all those acting in concert with it and at its direction, from engaging in any employment policy or practice which discriminates against any employee or member or applicant for employment on the basis of sex;

3. Order defendant to make whole those persons adversely effected by the policies and practices described herein by providing appropriate back pay and reimbursement for lost sick leave pay, health and disability insurance benefits, pension, social security and other benefits in an amount to be shown at trial, and other affirmative relief including, but not limited to, an affirmative action program designed to eliminate the effects of the discriminatory practices complained of herein;

4. Retain jurisdiction over this action to assure full compliance with the orders of this Court and with Title VII and require Defendants to file such reports as the Court deems necessary to evaluate such compliance;

5. Grant Plaintiff and the class she represents, her attorneys' fees, costs, and disbursements; and

6. Grant such additional relief as the Court deems proper and just.

(Caption Omitted)

AFFIDAVIT OF ELMER L. HENSON, JR.

(Filed July 9, 1974)

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Elmer L. Henson, Jr., being first duly sworn, deposes and says as follows:

I am Vice-President—Personnel of Nashville Gas Company (the "Company") and have been in charge of the personnel department of the Company since 1962. As such I have custody and control of the personnel records of all employees of the Company.

The plaintiff was hired by the Company as a junior clerk in the customer accounting department on March 24, 1969 and was promoted to clerk on December 22, 1969. She continued to hold that position until December 29, 1972 when she was placed on pregnancy leave.

At some point during the year 1972 after I became aware that plaintiff was pregnant, I discussed with her and two other female employees who were pregnant at the time the policy of the Company with respect to pregnancy leaves. At that time I told the plaintiff and the other two female employees that a decision as to when they should commence pregnancy leave would be based on their doctors' opinion, their duties with the Company, their work area, and degree of public contact, but that I was to have the final decision as to when pregnancy leave was to commence. I explained to the plaintiff and the other two female employees that I understood the importance to them of the income they were earning from

the Company but at the same time had to consider their welfare, the welfare of the unborn child and the welfare of the Company in determining when pregnancy leave should commence. Friday, December 22 and Monday, December 25 were Company holidays. After plaintiff failed to report for work on Tuesday, December 26, Wednesday, December 27, Thursday, December 28, and Friday, December 29, 1972, I directed her supervisor to request her to request pregnancy leave and pregnancy leave was granted commencing December 29, 1972. Plaintiff's child was born on January 23, 1973. The other two female employees were placed on leave one month and two days and one month and ten days before delivery of their respective children.

It has been and is now the policy of the Company to grant pregnancy leaves for up to one year. It is the policy of the Company to permit employees on pregnancy leave to return to permanent employment when there is an available position for which such employee is qualified and for which no person then permanently employed is bidding. Prior to such permanent employment becoming available it is the policy of the Company to give the employee on pregnancy leave temporary work for which she is qualified when such temporary work is available. An employee who has been on pregnancy leave and returns to permanent employment retains the seniority she had previously accumulated for purposes of pension, vacation, etc., but does not retain such seniority for the purpose of bidding on job openings.

During the time that I have been in charge of the personnel department of the Company, I am aware of only two male employees who have requested leaves of absence. The first male employee was granted a year's leave of absence to complete work for a college degree but he did

not seek to return to work at the end of his leave of absence. Another male employee is currently on leave to complete his education. If such employee seeks to return to work, he will be afforded the same treatment afforded female employees on pregnancy leave. Similarly if any other employee, male or female, were granted a leave of absence, such employee would be afforded the same treatment as that given to female employees on pregnancy leave.

At the time that the plaintiff was placed on pregnancy leave on December 29, 1972 she was earning $140.80 per week. Due to the fact that the Company was then contemplating converting certain of its accounting functions to a computer it was determined by her supervisor at the time she was placed on pregnancy leave that the position she held would not be filled. On March 14, 1973 plaintiff returned to work as a temporary employee for the Company and was paid $130.80 per week in that position. After the project on which the plaintiff was working as temporary employee was completed, her temporary employment ceased on April 13, 1973.

During the period from December 29, 1972 until May 10, 1973, plaintiff applied for three permanent positions with the company: Namely PBX Operator on March 8, 1973, Teller on March 14, 1973 and Deposit Refund Clerk on March 20, 1973. The positions of PBX Operator and Teller were sought by other persons who were then permanent Company employees and in accordance with Company policy the positions were given to such other employees. The duties of Deposit Refund Clerk were transferred to another employee in the Credit Department and accordingly that position was not filled.

On May 10, 1973, plaintiff requested me to change her employment status from pregnancy leave to terminated in

order that she might draw unemployment compensation. I advised plaintiff against being terminated on the ground that she would no longer be in a preferential position in the event a job became available for which no one in the Company was applying. Nevertheless, plaintiff insisted that she be terminated and she was terminated. Attached hereto as Exhibit 1 is a copy of a request for termination signed by plaintiff.

Subsequent to plaintiff's original employment by the Company in March 1969, she married another employee of the Company. It is Company policy not to hire members of the same immediate family. If two employees marry, the Company's policy provides that one of the two employees may be transferred or requested to resign. Although I did not consider it necessary to transfer plaintiff or her husband to another department or to request either one of them to resign, plaintiff's husband is still an employee of the Company and rehiring the plaintiff at this time would be in violation of Company policy.

As a condition of employment, every employee of Nashville Gas Company is required to be covered under a group life, health and accident policy issued by Provident Life and Accident Insurance Company. In addition to other health and hospitalization benefits, said policy also provides for payment of 50% of the customary and reasonable fees incurred in connection with pregnancy. Such pregnancy benefits apply to female employees and dependent wives of male employees. Although the insurance plan terminates with respect to an employee at the time such employee's active employment ceases, the maternity benefits continue to apply for up to nine months after termination if pregnancy exists on the date of termination and if such benefits would have been payable had delivery occurred on the date such active employment ceases. In

connection with plaintiff's pregnancy, $333.48 was paid under the group insurance plan.

The Company does not have any disability insurance plan for its employees but does provide a specified number of sick leave days based on the employee's seniority. Employees, like plaintiff, who go on pregnancy leave are not paid for any accumulated sick leave but are paid for any accumulated vacation time. At the time plaintiff was placed on pregnancy leave, she did not have any accumulated vacation time.

/s/ Elmer L. Henson, Jr.
Elmer L. Henson, Jr.

Sworn to and subscribed before me, this 9th day of July, 1974.

/s/ Jerry L. McCord
Notary Public

My Commission expires: 1-31-78.

Exhibit 1

May 10, 1973

Due to lack of work and job openings, I would like the Nashville Gas Company to release me from my leave of absence, and make my status termination due to reduction in force.

This will let me draw from my unemployment until I either find another job or a job opening occurs with the Company.

/s/ Nora D. Satty
Nora D. Satty

(Caption Omitted)

ORDER

(Filed July 10, 1974)

This cause came on to be heard on the tenth day of July, 1974 before the Honorable L. Clure Morton, United States District Judge, upon the motion by the Plaintiff for a preliminary injunction, the sworn complaint, the testimony of witnesses and the affidavit of Elmer L. Henson, Jr., from all of which the Court is of the opinion that the Plaintiff has failed to establish any irreparable injury that will be suffered from the failure to grant the preliminary injunction and that monetary damages can compensate Plaintiff for any injury she may suffer.

It is accordingly ORDERED that the motion for preliminary injunction be and hereby is denied.

(Caption Omitted)

ANSWER

(Filed July 22, 1974)

The defendant Nashville Gas Company for answer to the Complaint heretofore filed against it states as follows:

1. It admits the allegations of paragraph 1 of the Complaint.

2. It denies that it has committed or is committing any unlawful employment practices.

3. It admits the allegations of paragraph 3 of the Complaint.

4. It admits the allegations of paragraph 4 of the Complaint.

5. It denies that plaintiff is entitled to maintain this action as a class action.

6. It admits the allegations of paragraph 6 of the Complaint.

7. It admits the allegations of paragraph 7 of the Complaint.

8. It admits that on December 29, 1972, plaintiff was placed on pregnancy leave on the instructions of Elmer Henson, Jr., its Vice-President—Personnel. It is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning any advice given or not given by plaintiff's physician at that time but would state that on December 29, 1972, plaintiff had been absent from work for four consecutive days as a result of her pregnancy.

9. It admits that during her absence due to her pregnancy plaintiff was not paid sick-pay benefits to which she would have been entitled if she had been absent due to illness but would state that pregnancy is not an illness. It would state that whether or not plaintiff's expenses of pregnancy were as fully covered by its group insurance policy, as were illnesses and disabilities requiring medical attention, would depend on the circumstances of such illnesses and disabilities and it would further state that the expenses of plaintiff's pregnancy were as fully covered under its group insurance policy as would be the expenses of pregnancy of the wife of a male employee.

10. It admits that the plaintiff returned to work for defendant on March 14, 1973 and that at the time she returned she was considered a temporary employee. It denies that plaintiff was paid the rate of pay for beginning employees and denies that plaintiff was earning $17.00 per week more prior to December 29, 1972.

11. It denies that it refused to consider plaintiff's application for job openings for which she was qualified but would state that she was not placed in the job openings for which she applied because there were other applicants for such job openings who, at the time such job openings were filled, had longer continuous active employment with the defendant.

12. It denies the allegations of paragraph 12 of the Complaint.

13. It denies the allegations of paragraph 13 of the Complaint.

14. It denies the allegations of paragraph 14 (numbered as paragraph 9 on page 5) of the Complaint.

15. It denies the allegations of paragraph 15 (numbered as paragraph 10 on page 5) of the Complaint.

16. It denies the allegations of paragraph 16 (numbered as paragraph 11 on page 5) of the Complaint.

17. Plaintiff's action is barred by the statute of limitations set forth in Section 28-304 of Tennessee Code Annotated.

(Caption Omitted)

ANSWERS TO PLAINTIFF'S INTERROGATORIES

(Filed August 23, 1974)

INTERROGATORY NO. 1. State your name.

RESPONSE TO INTERROGATORY NO. 1: Elmer Lee Henson, Jr.

INTERROGATORY NO. 2: State your position with Nashville Gas Company.

RESPONSE TO INTERROGATORY NO. 2: Vice President—Personnel.

INTERROGATORY NO. 3: In that position are you familiar with the policies of the Nashville Gas Company concerning employees who are out of work for extended periods of time due to injuries or illness which are not job related?

RESPONSE TO INTERROGATORY NO. 3: Yes.

INTERROGATORY NO. 4: What is this policy?

RESPONSE TO INTERROGATORY NO. 4: Employees other than supervisors who are absent from work for extended periods of time due to non job-related injuries or illnesses are paid sick leave pursuant to the description of sick leave contained in the Company's Employee Policy Manual. At such time as the employee is able to resume work, he or she is generally returned to the job previously held (see response to Interrogatory No. 5) if his or her physical condition permits. In certain cases, an employee may be placed on formal leave of absence, in which case when the employee is able to resume work, he or she returns to whatever position is available.

INTERROGATORY NO. 5: Does Nashville Gas Company hold jobs open for persons who are out for extended periods of time with non job-related illnesses or injuries?

RESPONSE TO INTERROGATORY NO. 5: Although the Company does not feel that it is obligated to hold jobs open for an employee who is absent for extended periods of time with non job-related illnesses or injury, it has in practice usually held such job open.

INTERROGATORY NO. 6: After a non job-related illness or injury, is an employee who returns to work at

Nashville Gas Company paid the same rate of pay as he was paid prior to said illness or injury?

RESPONSE TO INTERROGATORY NO. 6: If, as is normally the case, the employee returns to the job previously held, he or she returns at the same classification rate and thus would be entitled to any pay raises that may have taken effect during the employee's absence.

INTERROGATORY NO. 7: After a non job-related illness or injury, is an employee who returns to work at Nashville Gas Company entitled to the seniority which he or she had accrued prior to the illness or injury?

RESPONSE TO INTERROGATORY NO. 7: Yes, unless the employee was on formal leave of absence, in which case he retains seniority for purposes of vacation, pension, etc., but not for the purpose of bidding on job openings.

* * *

INTERROGATORY NO. 23: Is Lawrence Deal an employee of Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 23: Yes.

INTERROGATORY NO. 24: If the answer to question 23 is yes, has he ever been absent from Nashville Gas Company due to back trouble?

RESPONSE TO INTERROGATORY NO. 24: Yes—four operations.

INTERROGATORY NO. 25: If the answer to question 24 is yes, how long was Mr. Deal absent?

RESPONSE TO INTERROGATORY NO. 25: Approximately 2/26, out 1 1/2 months; 12/68, out 1 1/2 months; cannot remember dates on other two operations.

INTERROGATORY NO. 26: If the answer to question 24 is yes, was his injury or illness job-related?

RESPONSE TO INTERROGATORY NO. 26: No.

INTERROGATORY NO. 27: If the answer to question 24 is yes, what was Mr. Deal's rate of pay and how much seniority and what were his duties, had Mr. Deal acquired prior to his leaving Nashville Gas Company for treatment of this condition?

RESPONSE TO INTERROGATORY NO. 27: 1962—$96.90, approximately 15 years; Senior Clerk—Distribution; 1968 $124.80, approximately 21 years; Senior Clerk—Distribution. Previous to this, probably 1957, Mr. Deal had a back operation and was unable to return to his classification as Serviceman at $2.34/hr. (405.60 per month) He returned to work 12/29/58 and was placed in a Mobile Collection office, in service at that time, at a rate of $415 per month. This office was discontinued in September 1960 and he was given the classification of Senior Clerk in the Distribution Department as his back would not permit him to return to the work required by Servicemen classification. He is still working in classification of Senior Clerk in the Distribution Department at this time. His rate of pay upon taking Senior Clerk position was $2.35 per hour or $407.55 per month.

INTERROGATORY NO. 28: If the answer to question 24 is yes, did Mr. Deal return to work after the treatment for this condition?

RESPONSE TO INTERROGATORY NO. 28: Yes.

INTERROGATORY NO. 29: If the answer to question 28 is yes, when did Mr. Deal return to work for Nashville Gas Company after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 29: 2/62, approximately 1 1/2 months; 12/68, approximately after

1 1/2 months. Do not know dates of previous other operations except that one was in 1957.

INTERROGATORY NO. 30: If the answer to question 28 is yes, what was Mr. Deal's rate of pay upon returning to work for Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 30: 1962, $99.80 (due to general increases while he was out); 1968, $124.80.

INTERROGATORY NO. 31: If the answer to question 28 is yes, what were the duties of Mr. Deal with Nashville Gas Company upon his return?

RESPONSE TO INTERROGATORY NO. 31: Senior Clerk—Distribution Department, 1958—Supervisor Mobile Collection office followed by Senior Clerk in Distribution Department.

INTERROGATORY NO. 32: If the answer to question 28 is yes, what amount of seniority was Mr. Deal credited with upon his return to Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 32: Seniority had been continued from date of hire.

• • •

INTERROGATORY NO. 34: If the answer to question 33 is yes, what was the nature of the illness or injury?

RESPONSE TO INTERROGATORY NO. 34: Back Trouble.

• • •

INTERROGATORY NO. 36: Is Paul Waggoner an employee of Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 36: Yes.

INTERROGATORY NO. 37: If the answer to question 36 is yes, has he ever been absent from Nashville Gas Company due to a heart attack?

RESPONSE TO INTERROGATORY NO. 37: Yes.

INTERROGATORY NO. 38: If the answer to question 37 is yes, how long was Mr. Waggoner absent?

RESPONSE TO INTERROGATORY NO. 38: From 1/26/70 to 5/11/70.

INTERROGATORY NO. 39: If the answer to question 37 is yes, was his injury or illness job-related?

RESPONSE TO INTERROGATORY NO. 39: No.

INTERROGATORY NO. 40: If the answer to question 37 is yes, what was Mr. Waggoner's rate of pay and how much seniority and what were his duties, had Mr. Waggoner acquired prior to his leaving Nashville Gas Company for treatment of this condition?

RESPONSE TO INTERROGATORY 40: $3.51 per hour; from 6/9/47 to 1/26/70; Serviceman.

INTERROGATORY NO. 41: If the answer to question 37 is yes, did Mr. Waggoner return to work after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 41: Yes

INTERROGATORY NO 42: If the answer to question 41 is yes, when did Mr. Waggoner return to work for Nashville Gas Company after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 42: 5/11/70.

INTERROGATORY NO. 43: If the answer to question 41 is yes, what was Mr. Waggoner's rate of pay upon returning to work for Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 43: $3.51 per hour.

INTERROGATORY NO. 44: If the answer to question 41 is yes, what were the duties of Mr. Waggoner with Nashville Gas Company upon his return?

RESPONSE TO INTERROGATORY NO. 44: Serviceman.

INTERROGATORY NO. 45: If the answer to question 41 is yes, what amount of seniority was Mr. Waggoner credited with upon his return to Nashville Gas Company.

RESPONSE TO INTERROGATORY NO. 45: Seniority continued from date of hire.

* * *

INTERROGATORY NO. 75: Is Eldon Horner an employee of Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 75: Yes.

INTERROGATORY NO. 76: If the answer to question 75 is yes, has he ever been absent from Nashville Gas Company due to back trouble?

RESPONSE TO INTERROGATORY NO. 76: Yes.

INTERROGATORY NO. 77: If the answer to question 76 is yes, how long was Mr. Horner absent?

RESPONSE TO INTERROGATORY NO. 77: 2/17/70 to 5/4/70

INTERROGATORY NO. 78: If the answer to question 76 is yes, was his injury or illness job-related?

RESPONSE TO INTERROGATORY NO. 78: No.

INTERROGATORY NO. 79: If the answer to question 76 is yes, what was Mr. Horner's rate of pay and how

much seniority and what were his duties, had Mr. Horner acquired prior to his leaving Nashville Gas Company for treatment of this condition?

RESPONSE TO INTERROGATORY NO. 79: $3.51 per hour; 6/11/62 to 2/17/70; Serviceman.

INTERROGATORY NO. 80: If the aswer to question 76 is yes, did Mr. Horner return to work after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 80: Yes.

INTERROGATORY NO. 81: If the answer to question 80 is yes, when did Mr. Horner return to work for Nashville Gas Company after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 81: 5/4/70

INTERROGATORY NO. 82: If the answer to question 80 is yes, what was Mr. Horner's rate of pay upon returning to work for Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 82: $3.51 per hour.

INTERROGATORY NO. 83: If the answer to question 80 is yes, what were the duties of Mr. Horner with Nashville Gas Company upon his return?

RESPONSE TO INTERROGATORY NO. 83: Serviceman.

INTERROGATORY NO. 84: If the answer to question 80 is yes, what amount of seniority was Mr. Horner credited with upon his return to Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 84: Seniority continued from date of hire.

* * *

INTERROGATORY NO. 88: Is Jane Dixon an employee of Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 88: Yes.

INTERROGATORY NO. 89: If the answer to question 88 is yes, has she ever been absent from Nashville Gas Company due to a heart attack?

RESPONSE TO INTERROGATORY NO. 89: Yes.

INTERROGATORY NO. 90: If the answer to question 89 is yes, how long was Ms. Dixon absent?

RESPONSE TO INTERROGATORY NO. 90: Two occasions; 3/71 to 1/72; 10/72 to 3/73.

INTERROGATORY NO. 91: If the answer to question 89 is yes, was her injury or illness job-related?

RESPONSE TO INTERROGATORY NO. 91: No.

INTERROGATORY NO. 92: If the answer to question 89 is yes, what was Ms. Dixon's rate of pay and how much seniority and what were her duties, had Ms. Dixon acquired prior to her leaving Nashville Gas Company for treatment of this condition?

RESPONSE TO INTERROGATORY NO. 92: $140.80 per week; 11/24/52 to 3/71; Senior Clerk in General Accounting.

INTERROGATORY NO. 93: If the answer to question 89 is yes, did Ms. Dixon return to work after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 93: Yes.

INTERROGATORY NO. 94: If the answer to question 93 is yes, when did Ms. Dixon return to work for Nashville Gas Company after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 94: 1/72 and 3/73.

INTERROGATORY NO. 95: If the answer to question 93 is yes, what was Ms. Dixon's rate of pay upon returning to work for Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 95: $154.80 (due to general increase while she was out); $167.20 (due to general increase while she was out).

INTERROGATORY NO. 96: If the answer to question 93 is yes, what were the duties of Ms. Dixon with Nashville Gas Company upon her return?

RESPONSE TO INTERROGATORY NO. 96: Senior Clerk—General Accounting.

INTERROGATORY NO. 97: If the answer to question 93 is yes, what amount of seniority was Ms. Dixon credited with upon her return to Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 97: Seniority continued from date of hire.

* * *

INTERROGATORY NO. 100: If the answer to question 89 is no, has Ms. Dixon ever missed two months or more from work with Nashville Gas Company for any non job-related illness or injury?

RESPONSE TO INTERROGATORY NO. 100: N.A.

INTERROGATORY NO. 101: Is Laney Frizzell an employee of Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 101: Yes.

INTERROGATORY NO. 102: If the answer to question 101 is yes, has he ever been absent from Nashville Gas Company due to an auto accident?

RESPONSE TO INTERROGATORY NO. 102: Yes.

INTERROGATORY NO. 103: If the answer to question 102 is yes, how long was Mr. Frizzell absent?

RESPONSE TO INTERROGATORY NO. 103: 1/19/71 to 2/8/71.

INTERROGATORY NO. 104: If the answer to question 102 is yes, was his injury or illness job-related?

RESPONSE TO INTERROGATORY NO. 104: No.

INTERROGATORY NO. 105: If the answer to question 102 is yes, what was Mr. Frizzell's rate of pay and how much seniority and what were his duties, had Mr. Frizzell acquired prior to his leaving Nashville Gas Company for treatment of this condition?

RESPONSE TO INTERROGATORY NO. 105: $148.80; from 3/17/41 to 1/19/71; Senior Clerk—Credit.

INTERROGATORY NO. 106: If the answer to question 102 is yes, did Mr. Frizzell return to work after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 106: Yes.

INTERROGATORY NO. 107: If the answer to question 106 is yes, when did Mr. Frizzell return to work for Nashville Gas Company after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 107: 2/8/71.

INTERROGATORY NO. 108: If the answer to question 107 is yes, what was Mr. Frizzell's rate of pay upon returning to work for Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 108: $148.80.

INTERROGATORY NO. 109: If the answer to question 107 is yes, what were the duties of Mr. Frizzell with Nashville Gas Company upon his return?

RESPONSE TO INTERROGATORY NO. 109: Senior Clerk—Credit.

INTERROGATORY NO. 110: If the answer to question 107 is yes, what amount of seniority was Mr. Frizzell credited with upon his return to Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 110: Seniority continued from date of hire.

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INTERROGATORY NO. 114: Is Lucian Mitchell an employee of Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 114: Yes.

INTERROGATORY NO. 115: If the answer to question 114 is yes, has he ever been absent from Nashville Gas Company due to back trouble?

RESPONSE TO INTERROGATORY NO. 115: Yes.

INTERROGATORY NO. 116: If the answer to question 115 is yes, how long was Mr. Mitchell absent?

RESPONSE TO INTERROGATORY NO. 116: Two occasions, 9/71, out approximately 6 months; 4/74 to 6/74.

INTERROGATORY NO. 117: If the answer to question 115 is yes, was his injury or illness job-related?

RESPONSE TO INTERROGATORY NO. 117: No.

INTERROGATORY NO. 118: If the answer to question 115 is yes, what was Mr. Mitchell's rate of pay and how much seniority and what were his duties had Mr. Mitchell acquired prior to his leaving Nashville Gas Company for treatment of this condition?

RESPONSE TO INTERROGATORY NO. 118: With respect to both periods of absence, Mr. Mitchell's seniority dated from 11/22/48 and he was serving as Automotive Supervisor. Defendant objects to revealing Mr. Mitchell's rate of pay on the ground that the salaries of supervisory personnel are regarded as confidential information and on the further ground that in view of the answer to Interrogatory No. 121, Mr. Mitchell's rate of pay is not relevant.

INTERROGATORY NO. 119: If the answer to question 115 is yes, did Mr. Mitchell return to work after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 119: Yes.

INTERROGATORY NO. 120: If the answer to question 119 is yes, when did Mr. Mitchell return to work for Nashville Gas Company after treatment for this condition?

RESPONSE TO INTERROGATORY NO. 120: Approximately 3/72; 6/74.

INTERROGATORY NO. 121: If the answer to question 120 is yes, what was Mr. Mitchell's rate of pay upon returning to work for Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 121: With respect to each period of absence, Mr. Mitchell's rate of pay upon returning to work was the same as when such period of absence commenced. For the reasons stated in Response to Interrogatory No. 118, Defendant objects to revealing Mr. Mitchell's rate of pay.

INTERROGATORY NO. 122: If the answer to question 120 is yes, what were the duties of Mr. Mitchell with Nashville Gas Company upon his return?

RESPONSE TO INTERROGATORY NO. 122: Automotive Supervisor.

INTERROGATORY NO. 123: If the answer to question 120 is yes, what amount of seniority was Mr. Mitchell credited with upon his return to Nashville Gas Company?

RESPONSE TO INTERROGATORY NO. 123: Seniority continued from date of hire.

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(Caption Omitted)

STIPULATION OF FACTS

(Filed August 27, 1974)

1. The Plaintiff was hired by Nashville Gas Company (the "Company") as a junior clerk in the customer accounting department on March 24, 1969, and was promoted to clerk on December 22, 1969. She continued to hold that position until December 29, 1972 when she was placed on pregnancy leave.

2. At some point during the year 1972 after Elmer L. Henson, Jr. became aware that Plaintiff was pregnant, he discussed with her and two other female employees who were pregnant at the time the policy of the Company with respect to pregnancy leaves. At that time, he told the Plaintiff and the other two female employees that a decision as to when they should commence pregnancy leave would be based on their doctor's opinion, their duties with the Company, their work area, and degree of public contact, but that he was to have the final decision as to when pregnancy leave was to commence. He explained to the Plaintiff and the other two female employees that he understood the importance to them of the income they were earning from the Company, but at the same time

had to consider their welfare, the welfare of the unborn child and the welfare of the Company in determining when pregnancy leave should commence. Friday, December 22 and Monday, December 25 were Company holidays. After Plaintiff failed to report for work on Tuesday, December 26, Wednesday, December 27, Thursday, December 28, and Friday, December 29, 1972, Elmer Henson directed her supervisor to request her to request pregnancy leave and pregnancy leave was granted commencing December 29, 1972. Plaintiff's child was born on January 23, 1973. The other two female employees were placed on leave one month and two days, and one month and ten days before delivery of their respective children.

3. It has been and is now the policy of the Company to grant pregnancy leaves for up to one year. It is the policy of the Company to permit employees on pregnancy leave to return to permanent employment when there is an available position for which such employee is qualified and for which no person then permanently employed is bidding. Prior to such permanent employment becoming available, it is the policy of the Company to give the employee on pregnancy leave temporary work for which she is qualified when such temporary work is available. An employee who has been on pregnancy leave and returns to permanent employment retains the seniority she had previously accumulated for purposes of pension, vacation, etc., but does not retain such seniority for the purpose of bidding on job openings.

4. Since 1962, only two male employees have requested leaves of absence. The first male employee was granted a year's leave of absence to complete work for a college degree, but he did not seek to return to work at the end of his leave of absence. Another male employee is currently on leave to complete his education. If such

employee seeks to return to work, he will be afforded the same treatment afforded female employees on pregnancy leave. Similarly, if any other employee, male or female, were granted a leave of absence, such employee would be afforded the same treatment as that given to female employees on pregnancy leave.

5. At the time that the Plaintiff was placed on pregnancy leave on December 29, 1972, she was earning $140.80 per week. Due to the fact that the Company was then contemplating converting certain of its accounting functions to a computer it was determined by her supervisor at the time she was placed on pregnancy leave that the position she held would not be filled. On March 14, 1973, Plaintiff returned to work as a temporary employee for the Company and was paid $130.80 per week in that position. After the project on which the Plaintiff was working as a temporary employee was completed, her temporary employment ceased on April 13, 1973.

6. On May 10, 1973, Plaintiff requested Mr. Henson to change her employment status from pregnancy leave to terminated in order that she might draw unemployment compensation. Exhibit 1 to the affidavit of Elmer L. Henson, Jr., dated July 9, 1974, is a copy of a request for termination signed by Plaintiff.

7. As a condition of employment, every employee of Nashville Gas Company is required to be covered under a group life, health and accident policy issued by Provident Life and Accident Insurance Company. The cost of such policy is borne half by the Company and half by the employees. In addition to other health and hospitalization benefits, said policy also provides for payment of 50% of the customary and reasonable fees incurred in connection with pregnancy. Such pregnancy benefits apply to female employees and dependent wives of male employees.

Although the insurance plan terminates with respect to an employee at the time such employee's active employment ceases, the maternity benefits continue to apply for up to nine months after termination if pregnancy exists on the date of termination and if such benefits would have been payable had delivery occurred on the date such active employment ceases. In connection with Plaintiff's pregnancy, $333.48 was paid under the group insurance plan.

8. The Company does not have any disability insurance plan for its employees, but does provide a specified number of sick leave days based on the employee's seniority. Employees, like Plaintiff, who go on pregnancy leave are not paid for any accumulated sick leave, but are paid for any accumulated vacation time. At the time Plaintiff was placed on pregnancy leave, she did not have any accumulated vacation time.

9. Subsequent to May 10, 1973, the Company did hire as a temporary employee the wife of a permanent employee.

10. Normal pregnancy is a temporarily disabling condition resulting from a normal bodily function.

11. The action of the Company in not permitting the Plaintiff to return to work until March 14, 1973 was not unreasonable or arbitrary.

12. Plaintiff's principal duties as clerk during 1972 involved the posting of merchandise accounts. Although the Company subsequently decided to discontinue its merchandise business, it anticipates that it will be several years before all of its merchandise accounts are paid in full and, subsequent to the commencement of Plaintiff's pregnancy leave, the posting of merchandise accounts had been done by temporary employees and other permanent employees.

13. Between May 10, 1973 and August 10, 1974, Plaintiff has received wages and unemployment compensation totaling $3,342.19.

14. The number of persons who have been placed on pregnancy leave by the Company since July 2, 1965 is twelve and the parties agree that such number is not so numerous that this action should be maintained as a class action.

15. Each of the three positions for which Plaintiff applied between December 29, 1972 and May 10, 1973 were filled by other females who were already permanent employees of the Company. Had Plaintiff been permitted to retain her seniority accumulated prior to the commencement of pregnancy leave for the purposes of bidding on such positions, she would have had more seniority than each of the other three persons.

16. Between December 29, 1972 and July 1, 1974, the following employees of the Company are the only employees who have been on pregnancy leave:

(a) *Nora D. Satty*—leave commenced 12/29/72—returned as temporary employee from 3/14/73 to 4/13/73—termination on 5/10/73.

(b) *Marsha Cushman*—leave commenced 2/19/73—terminated due to reduction in force on 8/27/73.

(c) *Shirley Freels*—leave commenced 3/16/73—terminated due to reduction in force 8/21/73.

(d) *Betty Branch*—leave commenced 8/31/73—returned to work as permanent employee on 10/29/73.

(e) *Kathie Canter*—leave commenced 12/27/73—returned as temporary employee on 3/18/74 and became permanent employee on 4/29/74.

17. In addition to the above listed employees who took pregnancy leave, three other permanent clerical employees of the Company have resigned since December 1972. However, since December 1972 only one new permanent clerical employee or PBX operator has been hired by the Company and that employee was hired on May 6, 1974.

(Caption Omitted)

PRE-TRIAL ORDER

(Filed August 28, 1974)

All pleadings are amended to comply with this Pre-Trial Order.

The names of all witnesses (except impeachment witnesses) shall be exchanged by counsel five (5) days before trial.

All exhibits and documents (except impeachment exhibits and documents) shall be exhibited to adversary counsel two (2) days before trial and shall be stamped by the Clerk of the Court before 9:00 A.M. on the date of trial.

The testimony of witnesses, affidavit and exhibits introduced at the hearing on Plaintiff's Motion for Preliminary Injunction on July 10, 1974, shall be deemed to be in evidence at the trial without any further action by either party.

ISSUES

The principal issue in this case is whether the application to Plaintiff of the Company's employment policies with respect to pregnancy was unlawful discrimination in violation of Title VII of the Civil Rights Act of 1964. Under this general issue are the following specific issues:

1. Was the payment of pregnancy benefits to Plaintiff under the Company's group health and hospitalization insurance plan unlawful discrimination in violation of Title VII?

2. Was the denial of sick leave benefits to Plaintiff when she was placed on pregnancy leave unlawful discrimination in violation of Title VII?

3. Was the Company's action in not holding Plaintiff's job open for her while she was on pregnancy leave discrimination in violation of Title VII?

4. Was the policy of the Company in rehiring Plaintiff on a temporary basis with the beginning rate of pay and no credit for accumulated seniority for purposes of bidding on job openings unlawful discrimination in violation of Title VII?

5. Was the action of the Company in requiring Plaintiff to commence pregnancy leave on December 29, 1972 arbitrary and thus unlawful discrimination in violation of Title VII?

A separate issue is whether the termination of Plaintiff's temporary employment on April 13, 1973 was in retaliation for her complaining about the Company's employment policies with respect to pregnancy?

To what relief, if any, is Plaintiff entitled if Defendant is found to have violated Title VII?

PLAINTIFF'S THEORY

Although pregnancy is not a sickness or an illness, it is a temporary disability which is totally necessary for the continuation of the human race. To oversimplify simple biology, it is also a condition which invariably occurs only in the female. Because it is necessary and because it oc-

curs only in the female sex, to treat it differently from illnesses or non-job related disabilities is discrimination based on sex.

Employees temporarily disabled by pregnancy are treated differently by Nashville Gas Company than are employees with other types of temporary disabilities. All pregnant employees are women, therefore, Nashville Gas Company's policy in regard to pregnant employees amounts to sex discrimination. The fact that it does not discriminate against all women employees is irrelevant. When a woman employee becomes pregnant, her disability is treated differently and only women are subjected to this different treatment. Because of the exclusiveness of this treatment, discrimination due to pregnancy is therefore discrimination due to sex.

The Defendant's requiring Plaintiff to begin her pregnancy leave on December 29th was an unreasonable, arbitrary and discriminatory act by Defendant in light of the fact that Plaintiff's child was not due until mid-February, her doctor had not advised her to cease her employment and her absence from work for four days was caused by a combination of a cold and medicines that she had been taking.

Defendant's insurance plan which pays less for pregnancy than it does for other illnesses or disabilities, likewise is a form of discrimination due to sex. The fact that the plan treats wives of male employees the same as female employees is irrelevant. The insurance plan pays less for a condition only a woman employee is subject to than it pays for other illnesses, injuries or disabilities.

The Defendant's refusal to provide sick leave benefits to Plaintiff during her pregnancy is discrimination based on sex. Pregnancy leave cannot be equated with a leave

of absence as Defendant maintains. Leave of absence is voluntary while pregnancy is not always voluntary and the facts of this case show that the pregnancy of Plaintiff was not in fact voluntary. Further, the Defendant provides sick leave benefits to persons who have non-job related disabilities which they have voluntarily incurred.

Failure of Defendant to reinstate Plaintiff in her prior position with its attendant rights and privileges, constitutes sex discrimination, since employees who suffer other types of temporary disabilities are reinstated with all seniority rights and at their previous rate of pay by the Defendant. The failure of Defendant to provide Plaintiff with her seniority rights as far as bidding on job openings on her return to temporary employment constitutes sex discrimination. Employees of Defendant who return to work from other types of temporary disabilities do not lose these seniority rights. The mere fact that the jobs for which Plaintiff bid were filled by other women does not remove the taint of discrimination.

The Defendant's termination of Plaintiff on April 13th, 1973 was in retaliation for Plaintiff's complaints concerning Defendant's policy in regard to pregnant employees and thus was an additional discriminatory act. Plaintiff's letter of May 10, 1974 was intended solely for the purpose of allowing Plaintiff to draw unemployment compensation. It was not Plaintiff's understanding or belief that by writing the letter she was excluding herself from further consideration for future job openings with Defendant.

DEFENDANT'S THEORY

Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Pregnancy is not a sickness or an illness and is not required to be

treated as such. Absent a showing that distinctions involving pregnancy are mere pretext designed to effect an invidious discrimination against the members of one sex or the other, an employer is free to treat pregnancy differently from the way in which it treats other physical conditions. The Defendant's pregnancy policy divides its employees into two groups: Pregnant women and non-pregnant persons. While the first group is exclusively female, the second includes members of both sexes and the benefits of the program thus include members of both sexes. This is Defendant's primary defense to the fact that it treats pregnancy differently from non job-related illnesses or accidents. In addition to this primary defense, the Defendant's theories with respect to the various specific sub-issues are as follows:

Insofar as the question of benefits under the Defendant's group health and hospital insurance plan is concerned, it is the position of the Defendant that since the pregnancy benefits are the same for female employees as for wives of male employees, the impact on the families of male and female employees is the same and thus there is no discrimination.

With respect to the payment of sick leave benefits, it is Defendant's position that it does not pay sick leave benefits to any other employees who take a leave of absence and that since pregnancy is not a sickness but rather results from a normal bodily function, the failure to pay sick leave benefits to employees on pregnancy leave is not unlawful discrimination.

With respect to plaintiff's seniority status when she resumed work as a temporary employee, it is defendant's position that denying her her previously accumulated seniority for the purpose of bidding on permanent job open-

ings was not unlawful sex discrimination because the jobs on which plaintiff bid were filled by other female employees.

With respect to defendant's failure to hold open plaintiff's job when she went on pregnancy leave, it is defendant's position that while it has permitted other employees to return to their jobs after extended absences, it has done so only when the nature of the job was such that the Company could function effectively without replacing the absent employee. Insofar as plaintiff's job was concerned, the Company had by the time her pregnancy leave began determined to automate various functions performed in her department and thus to reduce the size of the department through attribution and by dismissal if necessary. Thus the Company decided for valid reasons not to hold open plaintiff's job for her.

With respect to the reasonableness of requiring plaintiff to begin pregnancy leave on December 29, 1972, defendant feels that its action was reasonable in light of the fact that such date was only 25 days prior to delivery and plaintiff had been absent from work for four consecutive days as a result of the pregnancy.

With respect to the question of reinstatement and/or back pay, it is the position of the defendant that even if it is found to have discriminated against the plaintiff it can have no liability for the reinstatement or back pay subsequent to May 10, 1973 since plaintiff voluntarily terminated her employment at that time in order to draw unemployment compensation. Furthermore, the Company was and is in the process of reducing its number of personnel in the departments for which plaintiff would be qualified and in which she had made job applications and, accordingly, its failure to rehire was based on legitimate business reasons.

It is the defendant's position that under the facts in this case there is no basis for the allegations that plaintiff's discharge was in retaliation for her assertion of any rights under Title VII of the Civil Rights Act.

(Caption Omitted)

MEMORANDUM

(Filed November 4, 1974)

This cause of action was brought pursuant to Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e, et seq.) alleging sex discrimination in defendant's employment policies with respect to pregnancy. Plaintiff seeks back wages, lost benefits, attorney's fees and injunctive relief. Plaintiff further alleges that her employment was terminated because she complained about the allegedly discriminatory policies.

There is no dispute as to the jurisdiction of this court under Title VII of the Civil Rights Act of 1964.

Originally the cause was brought as a class action. However, the parties stipulated that the number of persons whom plaintiff may properly represent is not sufficiently numerous to permit maintenance of a class action under Rule 23, Federal Rules of Civil Procedure.

Simultaneously with filing of this action, plaintiff filed a motion for entry of a preliminary injunction requiring defendant to reinstate her as an employee and enjoining defendant from retaliatory measures. A hearing was held upon plaintiff's motion on July 10, 1974. At the close of the hearing, the court determined that a preliminary injunction would not be issued because plaintiff failed to establish that irreparable harm would be suffered by denial of the motion and it appeared that monetary dam-

ages could compensate plaintiff for any injury she might suffer.

The threshold question is whether or not defendant's employment policies, with respect to pregnancy, constitute unlawful sex discrimination.

I.

The parties have stipulated as to the following statement describing defendant's policy of health insurance:

> As a condition of employment, every employee of Nashville Gas Company is required to be covered under a group life, health and accident policy issued by Provident Life and Accident Insurance Company. The cost of such policy is borne half by the Company and half by the employees. In addition to other health and hospitalization benefits, said policy also provides for payment of 50% of the customary and reasonable fees incurred in connection with pregnancy. Such pregnancy benefits apply to female employees and dependent wives of male employees. Although the insurance plan terminates with respect to an employee at the time such employee's active employment ceases, the maternity benefits continue to apply for up to nine months after termination and if such benefits would have been payable had delivery occurred on the date such active employment ceases.

Plaintiff's theory is that defendant's group insurance program discriminates on the basis of sex because a reduced benefit is paid in the case of pregnancy when compared with hospitalizations for other causes. There is no doubt that the insurance program makes a distinction in the case of pregnancy as to the extent of benefits available. However, the pregnancy distinction applies to both male

and female employee-beneficiaries of the plan. The insurance proceeds are paid on behalf of the employee, male or female, according to a single formula in all pregnancy cases. Thus, for a male employee whose wife is pregnant, the insurance benefit is the same as provided to a pregnant female employee such as plaintiff.

The parties further stipulated that pregnancy is a temporary disabling condition resulting from a normal bodily function. In this case the plaintiff had a normal pregnancy and childbirth. Also, the parties have agreed that defendant does not have a disability insurance plan for its employees. This is not a situation where a female employee receives a lesser benefit for her disability than those received by males. Defendant's insurance plan pays no benefit whatsoever for disabilities. The only benefit under defendant's insurance plan is for payment of medical expenses. The issue in this case is whether defendant's insurance program discriminates unlawfully between male and female employees in the payment of medical expenses.

No evidence has been introduced to show a failure on defendant's part to comply with the Equal Employment Opportunity Commission guidelines on fringe benefits. Title 29, Code of Federal Regulations, Section 1604.9(d) provides:

> It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not available for female employees; or to make available benefits to the husbands of female employees which are not available for male employees. An example

> of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

So far as the issue relating to the insurance program is concerned, the court finds no distinction in the application, operation, or effect of the insurance plan to support a finding of unlawful discrimination by reason of sex since all employees, male or female, receive the same benefit.

II.

It has been and is now the policy of defendant to require pregnant employees to take maternity leave. Although defendant's "Employee Policy Manual," of September 27, 1971, presents availability of maternity leave in permissive terms, to wit:

> In case of pregnancy, an employee, upon written request *may* be granted a leave of absence. . . (Emphasis added)

actual practice demonstrates that a pregnant employee may not decline to accept maternity leave, and still retain employee affiliation with the defendant company. Once an employee is placed in maternity leave status, she may remain in that status for up to one year. There is no statement of policy concerning the status of an employee on maternity leave who is unable to return to work after one year. A fair inference is that such an employee would be terminated.

Once an employee is classified as being in a leave status, i.e., leave of absence or pregnancy leave, it is defendant's policy to offer such an employee temporary work, when available, until a permanent position is open. After an employee returns from leave status and acquires perma-

nent employment, the defendant credits such person with seniority previously accumulated for the purposes of pension, vacation, and other employee benefits based on seniority. However, defendant does not credit an employee returning from leave status who is subsequently classified as a temporary or permanent employee with previously accumulated seniority for the purpose of bidding on job openings. The significance of this policy is illustrated in the present case where plaintiff returned from pregnancy leave as a temporary employee after more than four (4) years of continuous employment, next preceding maternity leave, and defendant failed to place her in one of several permanent job openings. All of these openings were filled by other employees credited with greater job-bidding seniority even though plaintiff had the earlier date of initial employment. It appears that seniority is the primary factor in the job bidding process and failure to credit plaintiff with seniority for this purpose is the sole reason she failed to gain a permanent position with defendant following her return from maternity leave.

Defendant asserts that the job bidding policies are the same for all employees, male or female, returning from a leave status.

The gravamen to defendant's contention is that only pregnant women are required to take leave. In all cases other than maternity the decision to take leave is entirely a voluntary matter with each employee.

It further appears that defendant maintains a policy of allowing leave in connection with non-work related illness or injury without loss of seniority or other indicia of good standing on the part of an employee where the non-work related disability does not concern pregnancy. It is only in the case of pregnancy that an employee is denied the opportunity to take "sick leave."

Defendant does not have a disability insurance plan for its employees, but does provide a specific number of sick leave days based on the employee's seniority. Employees, like plaintiff, who are placed on pregnancy leave are not paid for accumulated sick leave, but are paid for accumulated vacation time. Defendant's policy has been to allow employees who have been absent due to illness or non-work related disabilities to take "sick leave." Only in the case of pregnancy is an employee denied the right to take sick leave. It further appears that employees returning from long period of absence due to non-job related injuries do not lose their seniority and in fact their seniority continues to accumulate while absent.

Defendant asserts that the classification of employees as pregnant employees and non-pregnant employees for application of the aforementioned policies does not constitute unlawful sex discrimination under Title VII. Defendant acknowledges that a number of court decisions under Title VII, and the position of the Equal Employment Opportunity Commission, indicate that policies affording different treatment for temporary disability due to pregnancy than for all other non-work related disabilities is discrimination based on sex. However, it is asserted that the recent United States Supreme Court decision in *Geduldig* v. *Aiello*, ... U.S. ....., 41 L.Ed.2d 256, ... S.Ct. ..... (1974), determined that disparity of treatment between pregnancy related disability and other disabilities does not constitute sex discrimination. The primary source for defendant's argument is found in footnote 20 to the Court's opinion.

If defendant's reliance on the *Geduldig* decision were proper, then it would not be necessary to consider other cases in this area. For the reasons stated below, the court concludes that defendant's reliance on the *Geduldig* decision is not well founded.

In *Geduldig* the sole question presented was whether classifications under a disability insurance program established and administered under the laws of California violated the Equal Protection Clause of the Fourteenth Amendment. The asserted constitutional violation was based on the exclusion of disabilities in connection with normal pregnancies from coverage under the insurance program. The United States Supreme Court held that the exclusion of normal pregnancies from benefit coverage did not involve improper state action. The standard applied by the Court to test the constitutional question was one of "reasonableness." There was no question concerning the legitimacy of the state's action in establishing the disability insurance program to supplement the workman's compensation program. The analytic key to the *Geduldig* decision is found in the following language:

> This Court has held that, consistently with the Equal Protection Clause, a State "may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others . . ." * * * Particularly with respect to social welfare programs, ***so long as the line drawn by the State is rationally supportable,*** the courts will not interpose their judgment as to the appropriate stopping point. "[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all." * * *. (41 L.Ed.2d 256, 263-264. [emphasis added])

In finding a rational basis for the exclusion of normal pregnancies under the California disability insurance program, the Court noted several factors relating to the fiscal soundness of the program which were found sufficient.

It should be noted that *Geduldig* did not involve an assertion of unlawful action under the Civil Rights Act of 1964. The plaintiff in *Geduldig* was not an employee nor prospective employee claiming unlawful discrimination by reason of the State's employment practices. The question of whether the California disability insurance program sufficiently affects interstate commerce so as to be subject to the Civil Rights Act of 1964 does not appear to have been litigated.

In discussing the rational basis of California's exclusion of pregnancy benefits, the Court referred to the cases of *Reed* v. *Reed*, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251, and *Frontiero* v. *Richardson*, 411 U.S. 677, 36 L.Ed.2d 583, 93 S.Ct. 1764. Both of these cases were brought under the Equal Protection Clause of the Fourteenth Amendment and in each case the Court found there was no rational basis for discrimination. In the *Reed* case the Court found a provision of the Idaho Probate Code giving preference to males in appointment of administrators to be violative of the Equal Protection Clause. Writing for the Court, the Chief Justice stated the test to be applied in Equal Protection type cases:

> . . . [T]his Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. * * * The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation

> to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." (30 L.Ed.2d 225, 229).

In the final analysis the Court concluded that the Idaho statute had no rationale sufficient to sustain the different classifications established for men and women.

In the *Frontiero* decision the Court again found there was no rational basis for the distinction drawn in the payment of benefits between male and female members of the military services.

The standard applicable to state action under the Equal Protection Clause of the Fourteenth Amendment is distinct from the lawful power of Congress to establish different standards for conduct affecting interstate commerce. Under the Commerce Clause the Congress has plenary power to regulate all aspects of interstate commerce. *Gibbons* v. *Ogden*, 9 Wheat (22 U.S.) 1, 6 L.Ed. 23 (1824); *United States* v. *Darby*, 312 U.S. 100, 85 L.Ed. 609, 61 S.Ct. 473 (1941); *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 13 L.Ed.2d 258, 85 S.Ct. 348 (1964); *Maryland* v. *Wirtz*, 392 U.S. 193, 20 L.Ed.2d 1020, 88 S.Ct. 2017 (1968). In effect Congress has established a standard for testing employment discrimination that goes beyond the standard of "reasonableness" traditionally applied to the States under the Equal Protection Clause of the Fourteenth Amendment.

To further illustrate the distinction between the two standards of permissible discrimination, it is helpful to consider the legislative history of Title VII. Title 42 U.S.C. Sec. 2000e, et seq. presents the standard to be applied in cases of employment discrimination. In 1972 Congress

amended Title VII by deleting a portion of 42 U.S.C. Sec. 2000e(c) which originally provided:

> . . . but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance. . .

The effect of the 1972 amendment was to broaden the scope of Title VII and extend the employment standard to the States.

The case of *Maryland* v. *Wirtz, supra*, demonstrates the power of Congress under the Commerce Clause to prescribe the standard against which conduct will be gauged if that conduct affects interstate commerce. In noting that States are susceptible to the congressionally prescribed standards, the Court stated:

> But while the commerce power has limits, valid general regulations of commerce do not cease to be regulations of commerce because a State is involved. If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to federal regulations. (20 L.Ed.2d 1020, 1031)

The congressional standard to be applied under the Civil Rights Act of 1964 is stated in 42 U.S.C. Sec. 2000e-2 for those cases alleging discriminatory employment practices. The only exception to the standard that could have relevance in the instant case is found in 42 U.S.C. Sec. 2000e-2(e)(1) which provides that a classification based on sex, etc., is permissible if there is:

> . . . a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. . .

In light of the *Maryland* v. *Wirtz* decision, *supra*, it would appear that the proper standard to be applied in all employment discrimination cases properly brought under Title VII is the congressionally mandated standard outlined above.

All sex discrimination cases do not fall within the same category. As this discussion has illustrated, there are at least two classifications of sex discrimination cases: those arising under the Equal Protection Clause of the Fourteenth Amendment and those arising under Title VII of the Civil Rights Act of 1964. These two categories involve the application of different standards for the determination of whether distinctions based on sex are permissible. Under the Equal Protection Clause there need be only a "reasonable basis" for the legislative determination. However, under the Civil Rights Act of 1964, there must be an actual business necessity for employment policies that discriminate on the basis of sex. See *Moody* v. *Albemarle Paper Co.*, 474 F.2d 134 (4th Cir. 1973); *Diaz* v. *Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971); *Williams* v. *American St. Gobain Corp.*, 447 F.2d 561 (10th Cir. 1971).

The *Geduldig* case was brought under the Equal Protection Clause and not under Title VII. Thus, the standard involved was one of legislative reasonableness. Since *Geduldig* was not an employment case, it would be improper to draw a negative inference as to the power of Congress to establish a different standard of permissible discrimination for employers admittedly affecting inter-

state commerce.[1] For these reasons, defendant's contention that *Geduldig* controls in the instant case is rejected.

In the opinion of this court, defendant's employment practices are discriminatory in the following respects: (1) only pregnant women are required to take leave and thereby lose job bidding seniority and no leave is required in other non-work related disabilities; and (2) only pregnant women are denied sick leave benefits while in all other cases of non-work related disability sick leave benefits are available. *Dessenberg* v. *American Metal Founding Co.*, 8 FEP Cases, 291 (D.C. Ohio); *Hutchison* v. *Lake Oswego School District*, 375 F.Supp. 1056 (1974); *Gilbert* v. *General Electric Co.*, 375 F.Supp. 367 (1974). Defendant has introduced no proof of any business necessity in support of these discriminatory policies. The court must therefore assume no justification exists.

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1. In *Geduldig* the minority opinion indicates a willingness to impose the congressional standard manifest in Title VII as the appropriate test under the Equal Protection Clause. The minority opinion further indicates a willingness to find State classifications based on sex to be unconstitutional *per se*. However, the majority opinion expressly relies on the "rational basis" formula as set forth in the traditional line of cases under the Equal Protection Clause. The dispute within the Court in *Geduldig* does not appear to be whether California's statute discriminates on the basis of sex, but rather the dispute focuses on whether that discrimination is permissible under the Fourteenth Amendment, i.e., it is a question of legislative reasonableness. The dissenting opinion ultimately rests on the conclusion that the State lacked a rational basis for the distinctions drawn. References to the provisions of Title VII and Equal Employment Commission decisions and regulations by the minority appear to furnish fuel for the proposition that the standard of reasonableness under the Equal Protection Clause should be strengthened to conform with the congressional statement of policy. Rejection of that argument by the majority does not rationally suggest that the standard established under Title VII is weakened or in any way diminished in a case properly brought under the Civil Rights Act of 1964.

III.

Plaintiff further alleges that defendant's action in not holding her job open for her while she was on pregnancy leave constitutes discrimination based on sex. This allegation must be considered in light of certain business factors.

Plaintiff's principal duties prior to being placed on maternity leave involved the posting of merchandise accounts. It appears that defendant was considering prior to plaintiff's pregnancy, and has now initiated, the transfer of certain accounting functions to its computer processing department. Further, defendant has undertaken to discontinue its merchandise business. Both of these factors suggest a legitimate basis for the decision not to hold plaintiff's job open in the accounting department. The court discerns no discriminatory conduct by defendant with reference to this issue.

IV.

It is further asserted that defendant's action in requiring plaintiff to begin her pregnancy leave on December 29, 1972, was arbitrary and in violation of Title VII.

Although defendant's "Employee Policy Manual" suggests that pregnancy leave commence during the fourth month, actual practice shows that no set time is arbitrarily established to determine when leave shall be taken. Defendant's Vice President-Personnel has stated that several factors are weighed when reaching the decision to start pregnancy leave. These factors include: the opinion of the employee's doctor; the employee's duties; work area; and degree of public contact. Although the Vice President-Personnel was to be the final judge of when these factors should dictate the commencement of leave, there is no showing of abuse in reaching that decision.

Following employee holidays on Friday, December 22, and Monday, December 25, 1972, plaintiff failed to report for work on the next four consecutive work days. The proof shows that she was having a problem with water retention at that time and that she also had a common cold. After being placed on maternity leave on December 29, 1972, plaintiff gave birth to her child on January 23, 1973, some twenty-five days after maternity leave had commenced.

It is of paramount significance that defendant's policies as actually practiced do not fix an arbitrary month or date on which pregnancy leave must begin. The facts in each situation are considered on an individual basis. Given plaintiff's problem with water retention and the subsequent birth of her child on the 25th day of maternity leave, defendant's action does not appear to be arbitrary or irrational. See *Cleveland Board of Ed.* v. *LaFleur*, 414 U.S. 632, 39 L.Ed.2d 52, 94 S.Ct. 791 (1974).

V.

A further issue in this cause is whether the termination of plaintiff's temporary employment on April 13, 1973, was in retaliation for her complaining about defendant's employment policies with respect to pregnancy.

Plaintiff returned to work with defendant as a temporary employee on March 14, 1973. It was defendant's policy to place women returning from maternity leave in available temporary positions until a permanent opening was awarded on the basis of job bidding. Plaintiff worked as a temporary employee until April 13, 1973, when the temporary project to which she was assigned was completed. Plaintiff continued to apply for permanent job positions but was frustrated in her efforts by those policies

causing her to lose credit for accumulated seniority in job bidding. The court finds no evidence of retaliatory termination of plaintiff for assertion of her civil rights. However, it is clear that plaintiff's termination request was the result of her inability to retain permanent employment following forfeiture of her job bidding seniority rights by defendant.

VI.

The court concludes that plaintiff is entitled to the following relief:

1. Recovery of sick leave benefits that should have been paid during her maternity leave. Plaintiff is also entitled to have sick leave benefits credited and accumulated from the time she returned from maternity leave on March 14, 1973.

2. Back wages from March 14, 1973, until the present. The back wages shall be computed on the rate of pay earned by plaintiff on December 29, 1972, plus any across the board increases which may have occurred since that time. However, back pay will be reduced by amounts paid for temporary work with defendant, unemployment compensation received from the State of Tennessee, and wages from other employment.

3. Reinstatement as a permanent employee as of the date that the first permanent position after March 14, 1973, was filled with another employee having less seniority than plaintiff. Plaintiff will be credited with full seniority from the date of her initial hiring by defendant.

4. Recovery of reasonable attorney's fees.

The court authorizes the defendant to submit affidavits concerning plaintiff's status upon reinstatement. If there

has been a reduction in force by defendant which would have caused plaintiff's termination sometime after March 14, 1973, based on seniority computed from the date of her initial hiring, that fact may be shown to properly adjust the relief awarded plaintiff. Such affidavits should also reflect applicable "bumping" procedures, if any, to clarify whether or not plaintiff would have been entitled to a lesser position in defendant's company. Defendant may submit other data relating to the entitlement of plaintiff under the terms of this memorandum. However, defendant shall furnish copies of such affidavits to plaintiff's counsel and plaintiff shall have an opportunity to respond. The court will review such affidavits as are submitted relative to the determination of plaintiff's reinstatement and back wages, and if any material issue of fact is presented, a further hearing will be ordered on that matter. Defendant is allowed fifteen (15) days for the submission of affidavits and plaintiff shall have ten (10) days following defendant's submission to file counter-affidavits.

Counsel for plaintiff will submit an order consistent with the provisions of this memorandum.

(Caption Omitted)

STIPULATIONS

(Filed November 20, 1974)

Pursuant to the Memorandum of the District Court for the Middle District of Tennessee filed November 4, 1974, wherein it was ordered that the Plaintiff receive certain specific relief, in lieu of the affidavits provided for therein, the parties stipulate as follows:

1. Whereas the Court determined that the Plaintiff was entitled to sick leave benefits during her maternity

leave, the amount of the sick leave benefits which had accrued to her was $732.16.

2. Whereas the Court determined that the Plaintiff was entitled to have sick leave benefits credited and accumulated from the time she returned from maternity leave on March 14, 1973, Plaintiff will be credited with sick leave benefits in the amount of four (4) weeks at full pay and eight (8) weeks at one-half (1/2) pay.

3. Whereas the Court found that the Defendant did have a legitimate basis for not holding Plaintiff's job open during her maternity leave but that Plaintiff was entitled to reinstatement as a permanent employee as of the date that the first permanent position after March 14, 1973 was filled with another employee having less seniority than Plaintiff, Plaintiff is entitled to reinstatement as of April 2, 1973, the time at which the first employee with less seniority than Plaintiff was placed in an open permanent position for which Plaintiff was qualified. Plaintiff will be credited with full seniority from her date of initial hire, March 24, 1969.

4. Plaintiff shall recover back wages. This amount computed from April 2, 1973 until November 15, 1974 is $13,060.00. The Court provided, however, that the back pay be reduced by any amounts paid for temporary work with Defendant during this time, any unemployment compensation received from the State of Tennessee or any wages from other employment. From April 2, 1973 until April 15, 1973, plaintiff received $261.60 from Defendant for temporary work. From April 2, 1973 until November 15, 1974 Plaintiff received $1,674 for unemployment compensation, and during this same period Plaintiff received $1,668.19 from other employment. The total amount for which back pay should be reduced is $3,603.79. This leaves a total of $9,456.21 back pay for which Plaintiff is entitled

for the period April 2, 1973 to November 15, 1974 Social Security due on this amount by plaintiff is $553.19, and withholding tax is $1,154.99 for a total of $1,708.18, which amount should be deducted from Plaintiff's gross back wages and paid to the United States Government for plaintiff's benefit by defendant along with matching Social Security fund. The total amount to be paid directly to Plaintiff as of November 15, 1974 is $7,748.03.

5. Whereas the Court determined that the Plaintiff was entitled to be credited with full seniority from the date of her initial hiring by Defendant, Plaintiff will be credited with full seniority from March 24, 1969 for all purposes in which seniority is a factor including the Company retirement plan.

6. Whereas the Court determined that the plaintiff was entitled to recovery of reasonable attorneys' fees, plaintiff is entitled to recover $3,000.00, her reasonable attorneys' fees.

(Caption Omitted)

ORDER

(Filed November 20, 1974)

In accordance with the Memorandum filed November 4, 1974 in this matter, which is incorporated herein by reference, the agreed stipulations of the parties, and the entire record in this cause, it is ORDERED

1. That plaintiff recover sick leave benefits that should have been paid during her maternity leave in the amount of $732.16.

2. That plaintiff be credited with sick leave benefits from the time she returned from maternity leave on March

14, 1973 which are benefits in the amount of four (4) weeks at full pay and eight (8) weeks at one-half pay.

3. Defendant shall reinstate plaintiff as a permanent employee as of April 2, 1973, the date the first permanent position after March 14, 1973 was filled with another employee having less seniority than plaintiff. Plaintiff will be credited with full seniority from the date of her initial hiring by defendant.

4. That plaintiff recover back wages from April 2, 1973 until November 15, 1974, reduced by amounts paid her during this period for her temporary work with the Nashville Gas Company, her employment elsewhere, her unemployment compensation, withholding and social security benefits. This is a total amount of $13,060.00, reduced by $5,311.97, for a total due plaintiff for back wages of $7,748.03.

5. Plaintiff is to be credited with seniority from her original date of hire, March 24, 1969, for purposes of the Company retirement plan.

6. Attorney's fees are awarded to Robert W. Weismuller, Jr. and Tom H. Williams, Jr. in the amount of $3,000.00.

7. All of the foregoing Order is hereby stayed for a period of ten (10) days and thereafter pending appeal from this Order if, during said ten (10) day period defendant, Nashville Gas Company, files bond in the amount of $30,000 with a good and sufficient surety.

Defendant shall pay the costs of this cause, for which execution may issue if necessary.

TRANSCRIPT OF PROCEEDINGS

(Filed December 23, 1974)

* * *

[3] July 10, 1974

By the Clerk: Is the plaintiff ready?

By Mr. Williams: The plaintiff is ready.

By Mr. Wray: The defendant is ready.

By the Court: Put on your proof. I have read your file.

By Mr. Williams: Call Nora D. Satty.

MRS. NORA D. SATTY, having first been duly sworn, was thereupon called as a witness and testified as follows, to wit:

Direct Examination

By Mr. Williams:

Q. Mrs. Satty, were you ever employed by the Nashville Gas Company? A. Yes, sir.

Q. During what period?

By the Court: The defendant has filed an affidavit here that sets forth the employment dates, and they are—let me see, now, let's be sure we have it right.

All right, she was hired by the company as a junior clerk in the Customer Accounting Department on March 24, 1969; was promoted to clerk on December 22, 1969; continued to hold the position until December 29, '72 when she was placed on pregnancy leave; she returned on a temporary [4] basis—rather, she returned and they put her on a temporary employment status; her child was born on January 23rd; she was granted leave commencing December 29th, '72.

Let's see when it says she returned.

By Mr. Wray: It's on the third page, Your Honor, March 15th.

By the Court: Oh, March 14th, '73, she returned and was paid one hundred and thirty dollars and eighty cents per week as a temporary employee, and her employment was terminated, temporary employment terminated on April 13th, '73, is that right?

A. Yes, sir.

By the Court: We saved a lot of time. Go ahead.

By Mr. Williams: Yes, sir.

By Mr. Williams: (Continuing)

Q. During the period from 1969 to 1972, did you have occasion to receive sick pay benefits from Nashville Gas Company? A. No, sir.

Q. Pardon? A. What was the question?

Q. During the period from 1969 until 1972, did you have occasion to receive sick pay benefits from Nashville Gas Company? A. Yes, sir.

[5] Q. How often? A. Two or three times.

Q. Were you ever hospitalized? A. Yes, sir.

Q. Did you receive sick pay benefits on each of these times? A. Yes, sir.

By the Court: How many times were you hospitalized?

A. Three times.

By Mr. Williams: (Continuing)

Q. About what was the maximum period you were ever out from work during this time prior to the birth of your child? A. Approximately two weeks maybe.

By the Court: Now, wait a minute, two weeks at one time or two weeks total?

A. Two weeks each time.

By the Court: Two weeks each time, all right.

By Mr. Williams: (Continuing)

Q. Upon returning to work after these periods of disability, was your pay rate the same as it had been prior to your leaving? A. Yes, sir.

Q. Was your seniority the same it had been prior to leaving during this period of sickness? [6] A. Yes, sir.

Q. When did you become aware you were pregnant in 1972? A. After I had been to the doctor and I was about four months pregnant.

Q. Pardon? Speak up, please. A. Around August.

Q. When did you tell Nashville Gas Company about being pregnant? A. As soon as I found out.

Q. Was this a planned pregnancy or accidental pregnancy? A. Accidental.

Q. Were you aware of Nashville Gas Company's policy toward pregnancy prior to the time you found out you were pregnant? A. Yes, sir.

Q. How were you aware of this policy? A. By company manual.

Q. Mrs. Satty, I show you a copy of what purports to be an employee policy manual and ask you if this is the one which you claim sets out pregnancy leave policy? A. Yes, sir.

Q. Is this a copy of the one that was in effect in 1972? A. Yes, sir.

[7] By the Court: Exhibit No. 1. Let it be filed.

(Marked and Filed Plaintiff's Exhibit No. 1)

By Mr. Williams: (Continuing)

Q. Does it also include the sick pay plan? Does the manual also include the sick leave plan? A. Yes, sir.

By the Court: Have you seen this, gentlemen?

By Mr. Wray: Yes, Your Honor.

By Mr. Williams: (Continuing)

Q. After you informed Nashville Gas Company you were pregnant, were other employees hired to take your place while you were pregnant? A. Yes, sir.

Q. Prior to your leaving for pregnancy leave? A. They were hired before I left.

By the Court: Well, now, the affidavit says her position was never filled. Are you saying it was filled?

By Mr. Williams: Yes, Your Honor, we are.

By the Court: All right. You had better find out how she knows.

By Mr. Williams: (Continuing)

Q. When you returned to work as a temporary employee, was somebody doing the work you had been doing as a full-time employee? A. Yes, sir.
sir.

[8] Q. Were they doing it regularly? A. Yes, sir.

Q. Every day? A. Yes, sir.

Q. Did the Nashville Gas Company tell you whether they intended to follow the policy set forth in the company manual concerning your pregnancy?

By the Court: Who, when and where? We don't want the janitor telling her.

By Mr. Williams: (Continuing)

Q. Who did you talk to about working for Nashville Gas Company while you were pregnant? A. I talked to Mr. McCord, my supervisor and Mr. Hinson, the personnel director.

Q. Did either of them tell you that you could continue to work as long as it was healthy for you? A. With a doctor's statement saying that we were healthy to work, they allowed us to work.

Q. When were you terminated by Nashville Gas Company? A. The 29th of December.

By Mr. Wray: Your Honor, I'm having a hard time hearing the witness.

By the Court: Go to the jury box. Is that all right?

By Mr. Wray: Yes, sir.

By the Court: Terminated on December 29th she said, [9] is that right, December 29th? A. December 29th, '72.

By Mr. Williams: **(Continuing)**

Q. What were the circumstances that led up to your being terminated on December 29th? A. Christmas vacation, and I was off sick shortly after Christmas, and Mr. Hinson called me at home and asked me how I was feeling and did I think it was time to start my pregnancy leave.

Q. And what did you say to this? A. I told him that I would rather work on, but if that's the way he wanted it, I would, you know, start my leave.

Q. Had your doctor advised you to quit work yet? A. No.

Q. During the period you were sick, directly after Christmas, had you called in and informed people at Nashville Gas Company you were sick and that's why you didn't come in? A. Yes.

Q. Prior to being terminated, what was your job description? A. Clerk.

Q. What were your duties? A. Just general office duties. I was the merchandise clerk. I done answering telephone, posting, bookkeeping, [10] posting of merchandise, typing.

Q. All right, what was your rate of pay? A. At this time I was making standard pay, one hundred and forty dollars and some odd cents a week.

By the Court: The affidavit says one hundred forty dollars and eighty cents a week.

By Mr. Williams: (Continuing)

Q. Were there any step raises or seniority raises for being in the job for a length of time which added to this? A. That was with the step raises.

Q. That was with the step raises— A. Yes.

Q. —you were making one hundred and forty dollars and eighty cents? A. Yes, sir.

Q. I show you a schedule of the salary rates effective August 14th, 1972. Is your job—would the job description Clerk Standard fit what you were doing and your rate of pay? A. Yes, sir.

By Mr. Williams: I would like to make that an exhibit.

By the Clerk: Exhibit No. 2.

(Marked and filed Plaintiff's Exhibit No. 2)

By Mr. Williams: (Continuing)

Q. Prior to leaving Nashville Gas Company on December 29th, 1972, to begin your pregnancy leave, did you tell anyone [11] you intended to return to work after the birth of your child or you hoped to return to work? A. Yes, sir.

Q. Who did you tell? A. My supervisor, Mr. McCord. I believe I also talked to Mr. Hinson about it.

Q. Did either of them ever give you any instructions as to what to do when you were ready to come back to work? A. To give them a call.

Q. All right, when did you have your baby? A. January 23rd, '72.

By the Court: '73.

A. '73 excuse me.

Q. Did you apply for sick leave benefits for this period of pregnancy leave? A. No, sir.

Q. Why not? A. I don't think I was eligible to draw it.

Q. Why did you think that? A. According to company policy.

Q. Were you paid any sick leave benefits for this pregnancy period?

By the Court: I don't imagine she was. She didn't apply for them.

By Mr. Williams: (Continuing)

[12] Q. Were you covered under the company's group health insurance? A. Yes, sir.

Q. Had you been covered under this insurance during your other disabilities? A. Yes, sir.

Q. Was the coverage the same as it had been for your other disabilities? A. No, sir.

Q. Well, in what way was it different? A. It didn't pay as well as the other disabilities.

Q. When did you advise Nashville Gas Company you wished to return to work? A. Just right after the child was born.

Q. And what did they say? Who did you talk to there? A. I called Mr. Hinson just a few days after the child was born, and I also called Mr. McCord, and both of them advised me to give them a call after my six weeks' checkup.

Q. Did you call them after your six weeks' checkup? A. Yes, sir.

Q. Had your doctor okayed you to go back to work? A. Yes, sir.

Q. What happened when you called after the six weeks' checkup? A. I called to talk to Mr. McCord, and he was on [13] vacation or he wasn't in the office, and a Mr. Jerry Mason, had tried to call me, and he said that Mr. McCord wanted me to come back in to work.

Q. Did he tell you whether this work would be full time or temporary? A. Yes, he told me it was temporary.

Q. What was your rate of pay? A. I would start out entrance clerk.

Q. How much is that?

By the Court: One hundred and thirty dollars and eighty cents.

By Mr. Williams: (Continuing)

Q. How are job vacancies which come open at Nashville Gas Company filled?

By the Court: How are what?

By Mr. Williams: Job vacancies that come open at Nashville Gas Company, how are they filled?

A. With the employees of the company by bidding on the jobs.

By Mr. Williams: (Continuing)

Q. How were these bids evaluated, do you know? A. By seniority and experience.

Q. Did any jobs come open while you were a temporary employee? A. Yes, sir.

[14] Q. What jobs were they? A. There were three jobs; one was a switchboard; one was a teller in the cashier's department; and the other was a clerk in the credit department or heating service department, it was called.

Q. Did you have experience, similar type jobs or similar duties to these three jobs you have just described? A. I had some experience that I feel like that I possibly could have done the jobs.

Q. Now, the job. . . .

By the Court: Did you bid?

A. Yes, sir.

By Mr. Williams: (Continuing)

Q. The job of clerk in the heating department, did you bid on that job? A. Yes, sir.

Q. Do you know the girl who got the job? A. Yes, sir.

By the Court: The job in what department?

By Mr. Williams: Heating.

By the Court: Which one was that, switchboard, teller or clerk?

A. Clerk.

By Mr. Williams: Clerk.

By the Court: All right. I thought she said the [15] credit department. Was it the heating department?

A. It was called the heating service department; that was the title given to it.

By the Court: All right.

By Mr. Williams: (Continuing)

Q. Do you know how long she had been with the Nashville Gas Company? A. Three or four months.

By the Court: When you are laid off on temporary employment, are you ever in a position to bid on a job?

A. I did bid on the jobs.

By the Court: I mean, after you were laid off, after April the 19th, have you bid on jobs since then?

A. No.

By the Court: If you are not an employee, you can't bid on a job?

A. Well, I was considered not an employee when I was temporary, but when I was laid off from temporary duties from the temporary work they hired me for, I hadn't bid on any jobs since then.

Of course, the only way I happened to know about it, I would be up there—of course, my husband works with the company, and he might tell me jobs that are up for bid.

By the Court: Has he told you since you were laid off [16] in April?

A. Yes, sir.

By the Court: And you have not bid on them?

A. No, sir. I didn't think I was eligible to bid on them.

By the Court: Well, you have. . . .

A. I did call in and talk to Mr. Crew Anderson, vice president of the company, asking him about the jobs available and why hadn't I been called for any of them.

I was under the understanding when I left I would be called.

By the Court: Well, now, I haven't read this manual, so I don't know what is in it, but beginning on January the 23rd—well, six weeks after January 23rd, or when was it you went back then?

A. March.

By the Court: From March until April you had—when you were fired, you had about a month's seniority, didn't you? Under their theory?

A. Under their theory, yes, sir.

By the Court: All right, wouldn't that give you a right to bid on new jobs that became available for anybody?

A. I did bid on those three jobs.

By the Court: I know, that's while you were still there.

A. Right.

[17] By the Court: Well, suppose a job came up today, you have got a month's seniority, haven't you?

A. I have close to four years seniority.

By the Court: No, no, I mean under their theory. I know you claim your seniority goes all the way back. They claim, as I understand it, your seniority began on—in March.

Now, do you know whether or not they have hired any new people up there who were not working period on these jobs from April up to date?

A. They have hired people.

By the Court: Off of the street?

A. Right.

By the Court: And you have had no opportunity to bid on those jobs?

A. No, sir.

By the Court: All right.

By Mr. Williams: (Continuing)

Q. Now this job, this clerk's job, Mr. Hinson in his statement to the Court states that this job was eliminated. Do you know whether it was or not and if so when? A. Heating service or clerk's job in credit department?

Q. Right. A. When I was working temporarily, the job was filled. Should I call names?

[18] By the Court: Oh, sure.

A. The job was filled by Glenda McAbee. She was hired before I left on my pregnancy leave in December. I don't know exactly the date she was hired, but she was hired.

She was there for three or four months, and she—when I come back temporarily, the job went up for bid and she was hired for the job. She went downstairs to the downstairs credit department and started to learning the job.

By the Court: And you are saying that the job continued up until the time that you left there on April the 19th?

A. While I was working temporary, the job was up for bid, a girl bid on it. She went to work on the job. After a few weeks or so she turned the job down then and went back to her old position.

By the Court: Who has got the job now?

A. No one. They never filled it since then.

By the Court: They haven't filled it since then.

By Mr. Williams: (Continuing)

Q. But they originally filled it with Glenda McAbee, is that right? A. Yes, sir.

Q. Did you bring the fact that people were getting jobs you felt you were entitled to to your superiors' attention? A. Yes, sir.

Q. Who in particular? [19] A. My supervisor, Mr. McCord.

Q. When did you first do this? A. Right after Miss McAbee got this job, I brought it to his attention, because she was a junior clerk, that is, a beginning job with the Gas Company, and I was under the understanding by the policy that if I was to be hired back full time, I would begin as a junior clerk, and she was a junior clerk.

And I asked about her job, if I could be hired for it, and then they said they were not going to hire for that job.

Q. Did you complain about being a temporary rather than a full-time employee? A. Yes, sir.

Q. Did you tell them you didn't think it was right? A. Yes, sir, I even pointed out that I couldn't find anything in the manual about it.

Q. How long after this were you terminated by Nashville Gas Company? A. Around mid-April.

Q. How long was this after your discussion with Mr. McCord about you didn't think it was fair the way they were treating you? A. Just a few days after I said something, I was relieved from my temporary duties.

[20] Q. When you were laid off, did you tell them you wanted to be considered for any job openings that came up? A. I told Mr. Hinson this.

Q. You told Mr. Hinson this. What did Mr. Hinson say? A. He said that I was the first girl amongst the

three that were pregnant to leave, and I would be the first called back.

Q. Did you later ask to be released from your leave of absence from the company, from Nashville Gas Company?

By the Court: I don't understand that question. When was she on leave of absence?

By Mr. Williams: They call it a leave of absence or lay-off after April 19th, Your Honor.

By the Court: Well, I don't like the term.

A. They considered it still a pregnancy leave. I have—from December 29th, 1972, when I left on a pregnancy leave then, they—you have a year from that date until you can be hired back with the company as a pregnancy leave. I came back to work, wanted to come back to work in March, and then I was temporary when I come back then, but, see, they grant you a year's leave of absence due to pregnancy.

By the Court: Well, do you lose your seniority during that year?

A. Not supposed to if you are hired back within the year.

[21] By the Court: I am lost.

A. If you are hired back with the company within the year before the year is up, you gain your seniority from the prior years plus the time you start back temporarily or start back to work. Like I started back in March, if I had been hired on regular, I would have had my seniority from the time I started in 1969 up until I was hired back on in March and then it would carry on from there.

By the Court: All right.

By Mr. Williams: (Continuing)

Q. Did you write a letter to Nashville Gas asking to be relieved from your leave of absence? A. Yes, sir.

Q. Why did you do this? A. Mr. Hinson requested that I write a letter.

Q. For what reason? A. He said that he would need a letter to relieve me from my leave of absence, to enable me to draw unemployment benefits.

Q. So you did this to draw unemployment benefits? A. Yes, sir.

By the Court: Who is Mr. Hinson? What job does he have with the company?

A. He's personnel director.

By the Court: Did you call him or did he call you [22] about writing this letter?

A. I believe I called him or I talked to him about it.

By the Court: About what?

A. Drawing my unemployment from the company.

By the Court: You initiated the conversation?

A. I believe so.

By Mr. Williams: (Continuing)

Q. Is that a copy of the letter that you yourself wrote out? A. Yes, sir.

Q. Would you make it an exhibit, please? A. Yes, sir.

By the Clerk: Plaintiff's Exhibit No. 3.

(Marked and Filed Plaintiff's Exhibit No. 3)

By Mr. Williams: (Continuing)

Q. Did Mr. Hinson make some small changes in the letter and have it typed up for you to sign? A. Yes, sir.

By Mr. Williams: Now, Your Honor, a copy of that signed is attached to the affidavit of Mr. Hinson. We also have a copy of the letter as typed.

There is a copy attached to Mr. Hinson's statement or affidavit. We will introduce another copy if you wish.

By the Court: That's fine.

[23] By Mr. Williams: (Continuing)

Q. In September of 1973, did you file a complaint with the Equal Employment Opportunity Commission charging the Nashville Gas Company with sex discrimination? A. Yes, sir.

Q. Is this a copy of that complaint? A. Yes, sir.

Q. Will you make it an exhibit to your testimony? A. Yes, sir.

By the Clerk: Plaintiff's Exhibit No. 4, the complaint to the EEOC.

(Marked and Filed Plaintiff's Exhibit No. 4)

By Mr. Williams: (Continuing)

Q. In April, 1974, did you write the Equal Employment Opportunity Commission a letter stating you wished the investigation terminated? A. Yes, sir.

Q. Why did you do this? A. I had phoned several times and talked to them, and they said they had such a pile up of complaints that it would be a while before they would get to it. So, I asked or talked to this lady, and she told me that I could request it being sent and turned over to Federal Court or to go into Court and get myself a lawyer.

Q. Is this a copy of the letter that you sent them [24] asking that this be terminated? A. Yes, sir.

Q. Will you make this letter an exhibit to your testimony? A. Yes, sir.

By the Clerk: Plaintiff's Exhibit 5.

(Marked and Filed Plaintiff's Exhibit No. 5)

By Mr. Williams: (Continuing)

Q. Did you receive a letter from the Equal Employment Opportunity Commission in reply to your letter of April 1st? A. Yes, sir.

Q. Is this a copy of that letter? A. Yes, sir.

Q. Will you make it an exhibit? A. Yes, sir.

Q. Are you working now, Mrs. Satty? A. No, sir.

Q. You have no income from your work at all? A. I am drawing unemployment.

By the Clerk: Plaintiff's Exhibit 6.

(Marked and Filed Plaintiff's Exhibit No. 6)

By Mr. Williams: (Continuing)

Q. When were you and your husband married? A. March 15th, 1972.

Q. Did Nashville Gas Company know about y'all being [25] married? A. Yes, sir.

Q. Did anybody ever complain about it? A. I never heard one.

Q. Did anybody ever complain about your work while you were with Nashville Gas Company? A. No, sir.

By Mr. Williams: That's all of my questions.

By the Court: Cross-examine.

Cross-Examination

By Mr. Wray:

Q. Mrs. Satty, did you say no one ever complained about your work at Nashville Gas Company? A. What do you mean? Mr. McCord had talked to me once about personal phone calls is all the complaints; as far as my work was concerned, there was no complaints.

Q. Now, Mrs. Satty, just so I understand this, on or about May 10th, 1973, did you approach Mr. Hinson about having your status changed from pregnancy leave to terminated? A. Mr. Hinson—I either talked to Mr. Anderson or I talked to Mr. Hinson. I don't exactly—I believe I talked to several of them up there, Mr. Hinson, Mr. Anderson, Mr. Bollinger. I went in and talked to Mr. Anderson, and, of course, Mr. Anderson told me the same thing Mr. Hinson had, and he told me that I could come back to work temporarily. [26] This was after the mid-April, when I was relieved from my tempo-

rary duty or I could draw my unemployment, whichever I decided. I was still under the understanding at the time that I would come back as a junior clerk, not a clerk, and I assumed that it would be best maybe for me to try and find another job.

So, I ask for my separation slip to draw unemployment until I found a job.

Q. Did Mr. Hinson advise you against that course of action? A. Not exactly, no.

Q. What do you mean not exactly? Did he explain to you that you would no longer be in a preferential position in terms of a job opening if you were terminated? A. He did not tell me that, no.

Q. Did he advise you against it in any way? A. No, sir.

Q. You are sure about that? A. I am sure about that. Mr. Hinson told me that I was the first girl among the three to leave being pregnant, and that I would be called back first when there was a job opening; that's why I was under the understanding that I would be called for any jobs that were available after I left in mid-April.

Q. Well, I'm focusing your attention—is it correct that your temporary work ended on April 13th? That's the [27] last date for which you were paid, is that right? A. Yes, sir.

Q. Okay, you did not actually—were not placed on separated until May 10th, is that right? A. No, because I didn't write the letter and didn't go—the letter that I wrote, I don't exactly know the date that it was.

By the Court: May the 10th, 1973, is what is on here.

A. Okay.

By Mr. Wray: (Continuing)

Q. What I'm getting at is what Mr. Hinson told you at the time you told him you wanted to be terminated

in May. Did he not tell you that you would no longer be in a preferential position? A. No, sir.

Q. And he did not advise you against seeking that termination? A. This letter was to relieve me from a pregnancy leave and enable me to draw unemployment. He did not tell me nothing about I wouldn't be hired back or in a position to come back to work there, if I drew my unemployment, he didn't tell me that, no.

Q. And then did you start drawing unemployment? A. Yes, sir.

Q. For what period of time did you draw unemployment? [28] A. I signed up for unemployment in May and drew it for twenty-one months or weeks, excuse me, weeks, twenty, twenty-one weeks.

Q. Now, during the time after your unemployment compensation was ceased, did you get another job? A. Yes, sir.

Q. Where did you work? A. With the Bailey Company.

By the Court: What company?

A. The Bailey Company, Incorporated; it's 501 Cowan Street.

By Mr. Wray: (Continuing)

Q. How long did you work for the Bailey Company? A. I went to work December the 10th of '73, and was laid off from that job, around April.

Q. Why were you—you say "laid off"? A. Yes, sir.

Q. Was that because there was no work to do or were you terminated because of unsatisfactory performance?

By Mr. Williams: I object. I don't see how this is relevant to today's hearing.

By the Court: I don't either, but I will let her answer it.

A. I was hired for the position, because there was a young girl there pregnant, and she had to leave. I was [29] hired—they did not have no one to fill the job with any experience at that time, and I was hired for the job.

I had not had experience as a receptionist-secretary to five salesmen. I did my best at the job until they found someone else, and then they laid me off and hired another girl for the job.

Q. What were you earning while you were working for the Bailey Company? A. A hundred and ten dollars.

By Mr. Williams: Objection again, we are not asking about money damages today. I don't see how this is relevant.

By the Court: I may get this thing over with today. How much did you earn?

A. One hundred and ten a week.

By Mr. Wray: (Continuing)

Q. Now, Mrs. Satty, you have testified that you requested that you be terminated in order to draw unemployment compensation, is that correct?

By the Court: She has testified about that and I listened very carefully.

Now, if you want to go into the circumstances, fine, but don't go into an ultimate conclusion because I have heard it.

By Mr. Wray: (Continuing)

Q. Well, in your complaint, Mrs. Satty, you have [30] alleged, paragraph twelve, that "When plaintiff complained to defendant about her status as a temporary employee and the failure of defendant to place her in any full-time jobs for which she had applied, the plaintiff was terminated as an employee of defendant in violation of Section 704, Title VII of the Civil Rights Act."

Now, what I'm asking is isn't the reason you were terminated is because you requested to be terminated in order to draw unemployment compensation? A. I didn't request to be terminated, I just asked for whatever I needed, a slip to draw my unemployment until the company had an opening or until I found a job.

Q. Mrs. Satty, when you went on pregnancy leave, was it your understanding of the company policy that you would have the benefit of your prior seniority in terms of bidding for a job? A. Now, what was the question again?

Q. When you went on pregnancy leave with the Nashville Gas Company, was it your understanding of the company policy that you would have the benefit of your prior seniority in terms of bidding for a job at the end of your leave? A. When I went on pregnancy leave, I didn't have—I didn't believe that or didn't think that I had chances on bidding on a job until I come back from my pregnancy after the child was born.

[31] Q. Mrs. Satty, I am afraid. . . .

By the Court: Well, after you came back after your child was born, what did you understand the company policy was with respect to your right to bid on jobs?

A. There was nothing in the policies saying I could not bid on the jobs, so I did bid on the jobs.

By the Court: What was your understanding about what seniority you would take into the bids with you?

A. I assumed I would have the seniority I had before the child was born.

By the Court: All right, does that answer your question?

By Mr. Wray: Yes, Your Honor.

By Mr. Wray: (Continuing)

Q. Mrs. Satty, while you were working with Nashville Gas Company, were you familiar with any of your

co-workers who had gone on pregnancy leave and then returned and their situations in terms of jobs to which they returned? A. Since I started working there, I only know of three, possibly three women who had children.

One of these women did not return to work—well, two of these women did not return to work.

The third did return to work and was hired back on, but she was hired back on as a junior clerk, and she was a clerk when she left.

[32] Q. Well, . . .

By the Court: Did she stay there regularly after that time?

A. Yes, yes, sir.

By the Court: What was her name?

A. Diane Dailey.

By Mr. Wray: (Continuing)

Q. Mrs. Satty, you have testified about three jobs that you applied for, I believe, all in March of 1973? A. Yes, sir.

Q. And I believe the testimony is that each of those jobs went to another person? A. Yes, sir.

Q. And each of those other persons was a full-time permanent employee at the time they were given the new position, is that correct? A. Yes, sir.

Q. Now, did that result that the ones who had been working full time permanently while you were on a pregnancy leave and they got the job, did that result conflict with what you thought the company policy was? A. Now, what do you mean?

By the Court: Well, did that follow—did that procedure that they went through there as far as your theory of the company policy, did that follow the company policy?

[33] A. They hired the three women, as they were full time. They hired them for the positions, but, of course, after I come back just—I was temporarily, temporary, as they say, and I considered myself, I felt that my seniority could have counted on the jobs even if I wasn't full time, because there was nothing in our policy saying it shouldn't or couldn't.

By the Court: All right, she says that disagrees with her understanding of the policy because her seniority was more than the ones that bid on the job. Is that what you said?

A. Yes, sir.

By Mr. Wray: All right.

By Mr. Wray: (Continuing)

Q. Mrs. Satty, when did you first give thought about filing a charge with the EEOC?

By the Court: What difference does that make?

By Mr. Wray: Well, Your Honor, I think it makes two differences: one, she. . . .

By the Court: All right, I will let her answer it.

When did you first think about it? You filed it on September 31st, '73. When did you first think about it? Was it sometimes when you were out fishing?

A. I had been checking with Hour and Wage every way possible, what I could see about getting my job back with the company, and they told me the only place that I could go [34] was to the Equal Employment Opportunity which was in Alabama, so I wrote to them and got an application and filled it out and sent it in.

By Mr. Wray: (Continuing)

Q. When was that? You filed it in September? A. It was before September. I don't know exactly when.

Q. Well, was it in May when you left the Gas Company or was it sometime before you started making all of these inquiries? A. Between May and September.

I had been to several different places between May and September.

Q. Starting in May? A. When I signed up for my unemployment, I talked to them at the unemployment office. I talked to Hour and Wage. I went up to the State Office Building and talked to a man up there. I went to the Labor Board and talked to a Mr. McAlister or something there, and he was the one that introduced the law to me, the written statement law, and that's where I went from there, and he told me I would have to go to Alabama, whenever that was, and I don't know the exact date.

Q. At the time that you informed Mr. Hinson that you were pregnant, did he indicate to you that the company policy was to treat it on an individual basis and to consider your [35] doctor's opinion, your work assignment, your welfare, the welfare of the child and the welfare of the Gas Company? A. Mr. McCord and the two girls and myself—Mr. Hinson was in his office when he went over this with us, and allowed us to work on. He told us we would have to have a statement from the doctor. So long as the doctor thought it permissible to work, he would allow us to work according to our health and the welfare of the child, yes, and our own health.

Q. And did he tell you that ultimately he felt he would have to make the final decision as to when your pregnancy leave should commence? A. He made a remark that some women when they are pregnant get so big that they look miserable, and, some, of course, never show that they even think that they are pregnant, and that he would possible suggest, if he considered us being off sick a lot and things like this, yes, he said he would consult us when we take our leave.

Q. And Mrs. Satty, I did not understand on direct examination why were you absent? You were absent from work then the entire last week of December, 1972, were you not? A. Yes.

By the Court: She said she was sick and said she called in and told them she was sick.

By Mr. Wray: (Continuing)

[36] Q. What type of sickness was it? Was it a sickness associated with your pregnancy? A. No, sir. Well, part of it might have been. I had a cold, and also my doctor had given me fluid pills, and I had lost nine pounds of fluid right there at the last of December.

By the Court: It was pregnancy illness, I'll tell you it was. Go to the next one.

I am not a doctor, but I know what fluid pills are that they give to pregnant women.

By Mr. Wray: (Continuing)

Q. Do you know, Mrs. Satty, whether the maternity benefits provided under the company's group insurance plan were the same that were provided to the wives of male employees?

By the Court: She said—do you know whether or not that's true or not?

A. If the insurance for myself. . . .

By the Court: The insurance you got for being pregnant, as a result of being pregnant, is the same that a wife of another employee would get if she were pregnant?

A. Yes, sir.

By the Court: But are they different for anybody that broke a leg?

A. This insurance paid more if you broke your leg.

By the Court: If you broke your leg, all right.

[37] A. The insurance only pays half of a pregnancy.

By the Court: And it pays all of the other?

A. No, I'm not sure it pays—it pays a percentage of it, seventy percent or something like that.

By Mr. Wray: (Continuing)

Q. Mrs. Satty, were you aware of the Gas Company's policy prohibiting hiring members of the same immediate family? A. Yes, sir.

Q. Now, you and your husband. . . .

By the Court: Does the company say, however, that two employees can't get married, and if one gets married they are going to fire him?

By Mr. Wray: No, they do not.

By the Court: Good, I hope they don't say that.

By Mr. Wray: (Continuing)

Q. Were you aware when you were terminated on May 10, 1973, that that policy prohibited hiring of members of the same or immediate family became applicable?

By the Court: Well, I think you are getting very far afield in this lawsuit.

Now, let me just tell you something, this lawsuit, as far as I am concerned, boils down to the fact as to whether or not you can take a different attitude toward a woman who gets pregnant and a man who breaks his leg or [38] breaks his arm or is in the hospital for six months because of employment.

Now, I know that pregnancy normally is voluntary and I am aware of that fact, but we have long since passed that stage in this matter, and I think that you can see the tendency in the Courts, and particularly I think you can see it in the Supreme Court of the United States.

So, as far as I am concerned, this lawsuit is going to be determined not on the question of just pregnancy alone, but on the question of the attitude of the company insofar as someone who is injured—not on the job, but who has an automobile accident out here on the 4th of July while he is fishing. I want to know what the com-

pany's attitude is about whether or not he loses his seniority and whether or not he has to go through a year's leave of absence and what have you. Now, that's the lawsuit, gentlemen.

By Mr. Wray: Well, Your Honor, could I just say one thing?

Insofar as this is a hearing for a preliminary injunction. . . .

By the Court: Oh, well, I'm going to tell you, I'll be perfectly frank with you right now, I'm not going to—so far, based on her testimony, there is nothing I can't take care of at a final hearing and give her money if she's entitled to it.

[39] By Mr. Wray: That was my only point, Your Honor.

By the Court: Now, so far there has been no irreparable harm shown—

By Mr. Wray: I will cease this line of questioning.

By the Court: —that money can't take care of. So, she has got a husband who is working and apparently he's putting food on the table, at least enough for them to eat, and so far she hasn't shown anything that indicates irreparable harm.

By Mr. Wray: I'm through then. That was the only purpose of that line of questioning—

By the Court: All right.

By Mr. Wray: —was towards whether there was any irreparable harm that could not be cured by monetary damages.

By the Court: Most of these job cases, unless there is something awfully peculiar, money can take care of them.

Any redirect?

By Mr. Williams: No questions, Your Honor.

By the Court: All right, step down.

By the Clerk: Everyone rise, please, a fifteen minute recess.

(Thereupon Court Recess for Fifteen Minutes)

By the Court: All right, call your next witness.

By Mr. Williams: Call Shirley Freels.

[40] MRS. SHIRLEY FREELS, having first been duly sworn, was thereupon called as a witness and testified as follows, to wit:

Direct Examination

By Mr. Williams:

Q. Mrs. Freels, did you ever work for Nashville Gas Company? A. Yes, sir.

Q. While you were there, did you become pregnant? A. Yes.

Q. When was this? A. My baby was born April of '73, so nine months before that.

Q. All right. Then you were pregnant at the same time that Mrs. Satty was pregnant? A. Yes, I was.

Q. When did you leave work?

By the Court: Well, are you going to go through the same routine? Was she given the same basic treatment as your client?

By Mr. Williams: Yes, sir, she was, but I have some further questions.

By the Court: We will assume she was given the same basic treatment. Go to the next questions.

By Mr. Williams: (Continuing)

[41] Q. Were you ever re-employed by Nashville Gas Company? A. No.

Q. Did you ask them to re-employ you? A. Yes, I did.

Q. Did you ask for any sort of work they had? A. Yes, I asked for temporary or full time.

Q. What did they tell you? A. Well, I asked on two different occasions. The first time Mr. McCord said he would have to check and see how much I would get paid, so. . . .

By the Court: Have to check and see what?

A. See what I would get paid,—

By the Court: Um-hm.

A. —which, you know, I thought I should get paid what I was making when I left.

So, I called him back and I told him at that time—first he told me to call him back after my six weeks' checkup, so I did, and then when I called him back after the six weeks' checkup, that's when he said he would have to check on my pay.

And then I called him back, and I said at this time I'm too nervous about leaving my child, and, you know, I didn't even ask him what I would get paid, but I didn't assume that it would be what I should be making.

By Mr. Williams: (Continuing)

[42] Q. But at a further date, a future date after that time, you went and asked to be employed, right, re-employed? A. Right. It was—I think maybe my baby was four months old or so. I asked for temporary or full time.

And Mr. Hinson said there was no temporary or full time

So, I said, "Well, then, I would like to draw my unemployment if you are not going to hire me back."

He said, "Well, think about it and call me back."

So, I thought about it, and I did call him back, and I said, "I do want to draw my unemployment if you are not going to hire me back, because I need to go to work or do something."

Q. And what was his reaction to you telling him this? A. Well, he tried to talk me out of it. He said he would like to see me come back to work there, but there wasn't anything right now.

Q. Did he tell you—advise you against drawing unemployment as far as how it would affect you being employed by Nashville Gas Company in the future? A. He did say it would terminate me if I drew it, that it was their policy not to take anybody back after they drew their unemployment.

Q. When you worked at Nashville Gas Company, did you [43] know Mrs. Satty, did you work in close proximity to her? A. Yes, I did.

Q. Were you familiar with the duties of the job she had on December 29th of '72, when she left to have her baby? A. Yes, I did.

Q. Do you know if after that time someone has since —do you know of your own knowledge that someone has come in and started doing that job? A. Well, at the time that I was there, there was a full-time job and a person doing it full time, and even when I had come back to visit, I saw people sitting at that desk doing that job.

By Mr. Williams: That's all of my questions.

By Mr. Wray: I don't have any questions of this witness.

By the Court: Step down.

By Mr. Williams: That's the plaintiff's proof, Your Honor.

By the Court: All right.

By Mr. Wray: I would like to call Mr. Hinson.

By the Court: What for?

By Mr. Wray: Well, there is one point in his affidavit I want—I think needs clarification. I will state that for the record.

By the Court: All right.

[44] By Mr. Wray: On page three, the last—on the last page, the last sentence, it says, "The duties of Deposit Refund Clerk were transferred to another employee in the

Credit Department and accordingly that position was not filled."

I believe this came out in the plaintiff's testimony that the job. . . .

By the Court: She said it was filled part time and eventually it was terminated, boxed.

By Mr. Wray: Right.

By the Court: I got that.

By Mr. Wray: I think this was a little hard to comprehend on that one point.

By the Court: I caught it. I knew what was in the affidavit, and I heard her testimony.

All right, now, let me just say this one thing to you, I'm not going to issue a temporary injunction for the simple reason that is the principle relief sought in this case, and in addition to that there's no proof of irreparable damage for the simple reason that if this lady is entitled to be reinstated, I can reinstate her and give her back pay. So, there is no problem about that.

So, you can draw an order to that effect on the ground there is no proof of irreparable damage.

Now, I am going to set this case for hearing [45] right away. How much time do you need to get your interrogatories in, because if this girl is entitled to re-employment, she's going to get it. If not, she's not going to get it.

By Mr. Williams: Your Honor, we filed interrogatories the day we filed the lawsuit. I don't know how much time they need to answer it.

By the Court: Did you ask in there how they treat male employees who are either sick for non-work connected disability or who have accidents, non-work type accidents? If you didn't, file an interrogatory, because that's the thing I want to know.

By Mr. Williams: I believe we had that reserved for a second set of interrogatories. I think two sets should be more than sufficient for us to get our proof.

By the Court: How much time do you want?

By Mr. Williams: If they can get the second set back to us in two weeks, we should be ready in two weeks.

By the Court: Well, that's a little fast for me for my docket.

By Mr. Williams: I say, after we get our first set, we can prepare a second set.

By the Court: What time do we have available, Mrs. Cross? I will take one of those days off there. August 21st. All right, August 21st, gentlemen.

By Mr. Williams: Nine A.M.?

[46] By the Court: Nine A.M. Is that satisfactory, gentlemen?

By Mr. Wray: Fine with me, Your Honor. I believe that's all right with the defendant, Your Honor.

By the Court: Now, I think I have outlined to you the type of information I need, and that is how do you treat male employees who have illnesses that are non-job connected and accidents that are non-job connected. As far as I am concerned, that's dispositive of the lawsuit. If I am in error, you had better get me some law on it, because I think that's the approach of the Supreme Court of the United States on these sex discrimination cases, and so on that basis you see, you see what I think the law is, and if I am wrong, you had better tell me before we try the lawsuit.

By Mr. Wray: Do we file the normal pre-trial briefs?

By the Court: Oh, yes, yes, by all means, normal pre-trial briefs, and all of the proof that has gone in today will be a part of that record. It will not be necessary to re-introduce any of this proof at all.

So, about all the plaintiff will need to do then is read some answers to interrogatories and he can rest, and then the burden shifts to you.

All right, Mrs. Cross.

(Thereupon Court Adjourned)

[47] TRANSCRIPT OF PROCEEDINGS

September 5, 1974

By the Clerk: Is the plaintiff ready?

By Mr. Williams: Yes.

By the Clerk: Is the defendant ready?

By Mr. Wray: Yes.

By the Court: Plaintiff rests, is that right?

By Mr. Williams: No, Your Honor, there are just a few things we would like to bring out from Mrs. Satty's testimony and then some interrogatories we would like to enter in the record.

By the Court: All right.

MRS. NORA D. SATTY, having first been duly sworn, was thereupon called as a witness and testified as follows, to wit:

Direct Examination

By Mr. Williams:

Q. Now, Mrs. Satty, you were covered by the group insurance of Nashville Gas Company at the time you had your child, is that correct? A. Yes, sir.

Q. Now, Mrs. Satty, what expenses did you and your husband incur due to the birth of your child? A. The total expense or something?

Q. Well, how much was the doctor's fee, Mrs. Satty? [48] A. Three hundred dollars. It was three hundred and twenty, because the baby was a boy.

By the Court: Three hundred dollars for a girl and three hundred and twenty for a boy, is that what you are saying? That's a new one on the Court. I didn't know they made a difference.

By Mr. Williams: Yes, Your Honor, they charge extra for a circumcision.

By the Court: Okay, all right.

By Mr. Williams: (Continuing)

Q. How much was your room? A. For the total time I spent there, it was three hundred and forty-six ninety-five.

Q. And was this a semi-private room? A. Yes, sir.

Q. And how much was the child's room at the hospital? A. The nursery was a hundred and ten sixty-five.

Q. All right, now, how much did the insurance pay on the doctor's fee? A. Paid half of it, one hundred and sixty dollars.

Q. And how much did they pay for your room at the hospital? A. One hundred and seventy-three forty-eight.

Q. And how much did they pay for the child's room? A. Nothing.

[49] By Mr. Williams: That's all.

By Mr. Wray: I don't believe I have any questions.

By the Court: Step down.

By Mr. Williams: Your Honor, we have the answers to a set of interrogatories, some of which we would like to read into the record. I am afraid I am not familiar with the Court's procedure on this. Would you like us to read the entire question and answer or just state the numbers or file them?

By the Court: How many of them are there that you want to read?

By Mr. Williams: Well, the entire set of interrogatories.

By the Court: No, I mean, the ones you want to read.

By Mr. Williams: About sixty-one.

By the Court: You want to read sixty-one? You want to introduce sixty-one?

By Mr. Williams: Yes, sir.

By the Court: Give the numbers and we will consider them as—file the whole set of interrogatories, and they are now considered—answers to interrogatories, they are now considered a part of the evidence, and it's not necessary, but I usually file them as an exhibit so that they will be properly identified in the record.

By Mr. Williams: I believe a set has already been [50] filed with the Court. They should be in the file.

By the Court: It will now be filed as Exhibit No. . . .

By the Clerk: Plaintiff's Exhibit 7.

By the Court: Seven. So, we won't have to reread them. Now, then, is this the ones that were filed on August the 23rd, '74?

By Mr. Williams: Yes.

By the Court: All right, Plaintiff's Exhibit No. . . .

By Mr. Wray: Your Honor.

By the Court: Yes, sir?

By Mr. Wray: This morning we did file a stipulation as to the exhibits. I want to bring that up, because I think we numbered something else seven in that stipulation, so I believe this will become Exhibit No. 10.

By the Court: Well, I haven't seen the stipulation.

By Mr. Williams: I left it with the girl in your office, Your Honor.

By the Court: You don't file legal documents back in my office, you file them in the Clerk's office.

By Mr. Williams: Well, it was filed with the Clerk's office.

By the Court: And then you brought it back?

By Mr. Williams: Yes, sir.

By the Court: Well, it's not doing us much good. Mr. Marshal, will you go in there and see if you can extract [51] it.

All right, gentlemen, let's be sure you have numbered these exhibits on the schedule of exhibits in the manner in which they were introduced at the last hearing, is that correct?

By Mr. Wray: Numbers one through six which were introduced at the hearing, yes, Your Honor.

By the Court: All right, then, on that basis you have Exhibit No. 7 which is a typewritten note, and was that not introduced the last time?

By Mr. Wray: It was attached to the affidavit of Mr. Hinson which was filed last time.

By the Court: It is now then Exhibit No. 7. All right, then, we had better pull that out and let Mrs. Cross mark it.

By Mr. Wray: It was filed.

By the Court: In the file?

By Mr. Wray: Yes, Your Honor.

By the Court: What is it attached to?

By Mr. Wray: It is attached to the affidavit of Hinson.

By the Court: All right. All right, that will be Exhibit No. 7.

Exhibit 8, has that been filed?

By Mr. Wray: It was attached, Exhibits 8 and 9 were [52] attached to the answers to interrogatories which had been filed, so, it, too—those two should also be in the file.

By the Court: All right, Exhibits 8 and 9 are attached to the interrogatories, and the interrogatories will be filed as Exhibit 10. Very interesting. All right, gentlemen.

By Mr. Williams: The numbers of interrogatories are interrogatories one through seven, twenty-three through thirty-two, thirty-four, thirty-six through forty-five, seventy-five through eighty-four, eighty-eight through ninety-seven, one hundred to one hundred ten, one hundred fourteen to one hundred twenty-three.

By the Court: All right, they are now received in evidence.

Now, you rest, is that right?

By Mr. Williams: Now, we rest.

By the Court: Plaintiff rests.

By Mr. Wray: Defendant rests, Your Honor.

By the Court: All right, I guess we have a nice legal problem then, don't we? You gentlemen have filed briefs. Do you have anything you want to say?

By Mr. Williams: We have it all in the brief that we want to say, Your Honor.

By Mr. Wray: Your Honor, it is in the brief, but I would like to say that at the time we had the hearing on the motion for a preliminary injunction, I believe Your Honor made [53] some indication about the trend of the cases being towards pregnancy having to be treated as. . . .

By the Court: Well, . . .

By Mr. Wray: I think two recent cases, and one is a Supreme Court case decided at the end of June and another. . . .

By the Court: I had that case in mind when I talked about it. Are you talking about the California Blue Cross case—not Blue Cross, but the California. . . .

By Mr. Wray: The State Disability Insurance.

By the Court: Yes, I knew all about that case.

By Mr. Wray: And the subsequent Title VII case relying on that case just says the policy based on pregnancy. . . .

By the Court: I am very familiar with both cases, and the fact I said it was a trend has nothing to do with the way I am going to decide this lawsuit, because I don't know how I am going to decide it myself. I am going to have to do some research, substantial research, and I am aware of a number of—I say a number, I am aware of the trend that's involved, and what have you, and I believe I told the plaintiff that—plaintiff's attorney, that he was in trouble on his group insurance proposition, I thought, because of the California case. Now, at least, I told him I thought he was in trouble in view of a recent decision, and I don't know whether I mentioned the California case or not, but when I came in here, I had digested the California case up [54] one side and down the other, and I knew about the other case. No, I will take that back, I learned about the other case after that, I think. I think it came out a little after the hearing or just right at the time of the hearing.

I don't remember when it was I knew about it, but I knew about it before you referred to it in your brief.

But I get all of those—I take the same books that you take.

I will be happy for you to submit any additional briefs you want within fifteen days, unless you want some additional time, and I want a detailed findings of fact and conclusions of law based on the evidence in the record, and both live and, of course, in auditories, findings of fact, detailed findings of fact and conclusions of law in a manner in which I can just sign my name to them as if you had won. Do you see what I mean? So I can sign my name to them if I decide to do it.

I have been able to sign them maybe twice or three times in the long period of time. Usually neither—as a general rule, I don't see eye to eye with anybody, but once in a while I do, but if you are not aware of the form, you can get a form out of the Clerk's office or get one from my secretary, but most of you have seen my memorandums so you know how I like for them to be.

I have no—if you want to number the [55] paragraphs, you can, but I prefer basically the other, without numbered paragraphs, just a findings of fact and a relation of the facts and conclusions of law with the citations of authority is the way I prefer it, but I have no set rule about it.

Is fifteen days enough?

By Mr. Williams: Yes.

By the Court: Is fifteen days enough for you?

By Mr. Wray: Fifteen days.

By the Court: Then I will start my work after I get those.

All right, Mrs. Cross.

(Thereupon Court Adjourned)

EXHIBIT 1

EMPLOYEE POLICY MANUAL, SICK LEAVE AND PREGNANCY LEAVE SECTIONS

(Filed July 10, 1974)

SICK LEAVE—When an employee is absent because of illness, or non-compensable injury, he will receive pay depending upon his length of service with the company established by the seniority list, according to the following schedule:

Length of Service	Time allowed with Full Pay	Time allowed with One-half Pay
Up to 1 year	1 week	
1 year to 2 years	2 weeks	2 weeks
2 years to 5 years	3 weeks	6 weeks
5 years to 10 years	4 weeks	8 weeks
10 years to 15 years	6 weeks	12 weeks
15 years to 20 years	7 weeks	16 weeks
20 years to 30 years	8 weeks	24 weeks
30 years and over	9 weeks	30 weeks

Any employee who goes one full calendar year (January 1 through December 31) without using any of his sick leave, will be allowed to add 1 week to his full pay sick leave time allowance. This can be accumulated to a total time (including time allowed by the sick leave schedule) of twice the time allowed by the sick leave schedule. Any time used out of this premium sick leave by extended illness may be re-established only by additional year or years without use of sick leave.

Sick leave allowance is for any twelve month period. Length of service to determine the allowance is taken at the beginning of the illness involved. Pay will be computed at straight time rates for the employee's regularly scheduled days of work. When an employee is ill he should notify his supervisor as soon as possible, preferable before starting time. Sick leave will normally commence with the first day of illness, except as follows: An employee with two years service, but less than five years service, shall have a one day waiting period. The waiting period will be waived for an employee with two years service but less than five years service if he is absent for at least five working days for any one period of illness. An em-

ployee with less than two years service shall have a two days waiting period. Waiting period will be waived if the employee is confined in a recognized hospital. In the case of any employee with a record of frequent brief illnesses, a two day waiting period may be imposed. The Department Head or Supervisor may require the employee to furnish a statement from a duly licensed physician, approved by the company physician, attesting to the illness or disability before any sick leave payments are made. Sick leave is not payable for illness caused by an employee's own willful acts. No more than the sick leave allowance for one year can be paid for any one illness. An employee's abuse of the sick leave privilege will be cause for forfeiture of all future rights to paid sick leave.

In case of company on-the-job injury where Workmen's Compensation is to be paid, the difference, if any, between sick leave payments and Workmen's Compensation payments, will be paid. In arriving at any difference between the two, medical and hospital expenses of an employee injured on-the-job will not be included. Only the greater of the two benefits will be paid. Workmen's Compensation benefits will be paid in accordance with the State of Tennessee Workmen's Compensation Law.

• • •

In case of pregnancy, an employee, upon written request, may be granted a leave of absence up to one year. It is considered best that the employee leave the Company at least five months prior to the expected birth. If the employee desires to return to work, the company will make every effort to place her in the first available position for which she is qualified and eligible and acceptable by the Department Head in accordance with the employment policies.

EXHIBIT 2

(Filed July 10, 1974)

NASHVILLE GAS COMPANY

SCHEDULE OF SALARY RATES
EFFECTIVE AUGUST 14, 1972

		Hourly	Weekly
Junior Clerk	Entrance	2.65	106.00
	End 12 Mos.	2.74	109.60
	Standard (24 Mos.)	2.84	113.60
	Maximum	3.10	124.00
Clerk	Entrance	3.27	130.80
	End 12 Mos.	3.34	133.60
	End 24 Mos.	3.43	137.20
	Standard (36 Mos.)	3.52	140.80
	Maximum	3.59	143.60
Senior Clerk	Entrance	3.68	147.20
	End 12 Mos.	3.81	152.40
	Standard (24 Mos.)	3.96	158.40
	Maximum	4.18	167.20
Senior Clerk A	Entrance	3.96	158.40
	End 12 Mos.	4.08	162.20
	Standard (24 Mos.)	4.23	169.20
	Maximum	4.42	176.80
Clerk Stenographer	Entrance	3.35	134.00
	End 12 Mos.	3.46	138.40
	End 24 Mos.	3.54	141.60
	Standard (36 Mos.)	3.64	145.60
	Maximum	3.73	149.20
Jr. Clerk Stenographer	Entrance	2.85	114.00
	End 12 Mos.	3.01	120.40
	Standard (24 Mos.)	3.12	124.80
	Maximum	3.19	127.60
Sr. Clerk Stenographer	Entrance	3.68	147.20
	End 12 Mos.	3.81	152.40
	Standard (24 Mos.)	3.96	158.40
	Maximum	4.18	167.20
Teller	Entrance	3.43	137.20
	End 12 Mos.	3.53	141.20
	Standard (24 Mos.)	3.68	147.20
	Maximum	3.81	152.40

		Hourly	Weekly
Junior Accountant	Entrance	3.68	147.20
	End 12 Mos.	3.81	152.40
	Standard (24 Mos.)	3.96	158.40
	Maximum	4.18	167.20
Senior Accountant	Entrance	4.19	167.60
	End 12 Mos.	4.36	174.40
	Standard (24 Mos.)	4.49	179.60
	Maximum	4.64	185.60
PBX Operator	Entrance	3.68	147.20
	End 12 Mos.	3.81	152.40
	Standard (24 Mos.)	3.96	158.40
	Maximum	4.18	167.20
PBX - Clerk	Entrance	3.35	134.00
	End 12 Mos.	3.46	138.40
	End 24 Mos.	3.54	141.60
	Standard (36 Mos.)	3.64	145.60
	Maximum	3.73	149.20
Billing Machine Operator	Entrance	3.48	139.20
	End 12 Mos.	3.54	141.60
	End 24 Mos.	3.63	145.20
	Standard (36 Mos.)	3.73	149.20
	Maximum	3.81	152.40
Porter	Entrance	2.48	99.20
	End 12 Mos.	2.60	104.00
	Standard (24 Mos.)	2.71	108.40
	Maximum	2.83	113.20
Maid	Entrance	2.48	99.20
	End 12 Mos.	2.52	100.80
	Standard (24 Mos.)	2.57	102.80
	Maximum	2.60	104.00

WCA:mb
8/7/72

EXHIBIT 3

(Filed July 10, 1974)

May 10, 1973

Due to lack of work and job openings I would like the Nashville Gas Company to release me from my leave of absence.

This will let me draw my unemployment until I either find another job or a job opening occurs with the Company.

Nora D. Batty

EXHIBIT 7

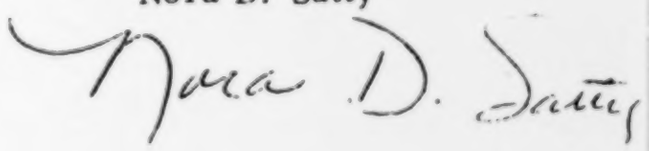
(Filed September 5, 1974)

May 10, 1973

Due to lack of work and job openings, I would like the Nashville Gas Company to release me from my leave of absence, and make my status termination due to reduction in force.

This will let me draw from my unemployment until I either find another job or a job opening occurs with the Company.

Nora D. Satty



No. 75-1083

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NORA D. SATTY,
Plaintiff-Appellee,

v.

NASHVILLE GAS COMPANY,
Defendant-Appellant.

AN APPEAL From the United States District Court for the Middle District of Tennessee.

Decided and Filed August 8, 1975.

Before: MILLER and ENGEL,* Circuit Judges, and TAYLOR,** District Judge.

TAYLOR, District Judge. After exhausting her remedies through the Equal Employment Opportunity Commission, this action was initiated by Nora Satty against the Nashville Gas Company for alleged sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* The District Court after hearing testimony from plaintiff denied her motion for a temporary injunction but thereafter on November 4, 1974 awarded reinstatement with seniority, back pay, including sick leave, and attorney fees. For the reasons set forth below, we affirm.

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*Judge Engel did not participate in the consideration of this decision.

**The Honorable Robert L. Taylor, United States District Judge for the Eastern District of Tennessee, sitting by designation.

Undisputed, the facts are relatively simple. Plaintiff was initially hired by Nashville Gas as a junior clerk in the customer accounting department on March 24, 1969, and was later promoted to clerk on December 2, 1969. Having previously informed her employer in August 1972 of her pregnancy, she was placed on maternity leave on December 29, 1972, pursuant to the request of the vice-president in charge of personnel. Plaintiff's child was born twenty-five days later on January 23, 1973. Under Nashville Gas' policy, an employee can be granted pregnancy leave for a period of up to one year. Following the child's birth and after a six week checkup the employee is permitted to return to full time status when a permanent position becomes available and when the opening is not bid on by a permanent employee. During the interim between the six week checkup and reemployment on a permanent basis, Nashville Gas attempts to provide the employee with temporary work. As a consequence of this policy, the employee who is placed on pregnancy leave, unlike the male employee who is absent due to a nonwork-related disability, loses her accumulated seniority for job bidding purposes but otherwise retains her accrued vacation and pension seniority. Similarly, while the employee is permitted to apply her accumulated vacation time to her absence during pregnancy, sick leave may not be applied to a pregnancy-related absence. It is these latter two specific policies that are the object of plaintiff's attack.[1]

On March 14, 1973, plaintiff returned to work as a temporary employee and was paid $130.80 per week, as

1. Unlike *Gilbert* v. *General Electric Co.*, No. 74-1557 (4th Cir., June 27, 1975); *Wetzel* v. *Liberty Mutual Insurance Co.*, No. 74-1233 (3rd Cir., Feb. 11, 1975) *cert. granted*, May 27, 1975, 43 U.S.L.W. 3621, and *Communications Workers of America* v. *American Telephone & Telegraph*, No. 74-2191 (2d Cir., Mar. 26, 1975), Nashville Gas has no disability income protection plan for its employees.

opposed to $140.80 she earned prior to her leaving in December, 1972; however, this temporary employment ended on April 13, 1973 when her job was completed. Thereafter, in order to collect unemployment compensation insurance, plaintiff requested Nashville Gas to change her employment status from pregnancy leave to complete termination. It was stipulated by the parties that between December 29, 1972 and May 10, 1973, plaintiff applied for three full-time positions with Nashville Gas which became available; however, in each case a permanent employee with job seniority was awarded the position. Had plaintiff retained her job bidding seniority, she would have been awarded the positions.

Against this background, the principal issue before the Court is whether Nashville Gas' pregnancy policy violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000-5, as amended. In holding that defendant's policy is violative of the Civil Rights Act of 1964, we note that this question, as framed in the context of the impact of the Supreme Court's decision in *Geduldig* v. *Aiello*, 417 U.S. 484 (1974), is one of first impression in this Circuit. The same issue has been addressed in four other circuits.[2]

Central to the dispute here is the controlling impact of the Supreme Court's decision in *Aiello* and, more particularly, the weight this Court should attribute to footnote 20 of that opinion. If *Aiello* and footnote 20 are dispositive of the issue whether a distinction between pregnancy related disabilities and other disabilities is sex based, then the threshold issue is easily resolved against plaintiff. If however, *Aiello* is not viewed as dispositive, then the Court must proceed to consider alternative constructions.

2. *Gilbert* v. *General Electric Co.*, *supra*; *Wetzel* v. *Liberty Mutual Insurance Co.*, *supra*; *Communications Workers* v. *American T. & T. Co.*, *supra*; *Holthaus* v. *Compton & Sons, Inc.*, No. 74-1655 (8th Cir. Apr. 10, 1975).

California, in establishing an employee supported disability insurance system for nonwork-related injuries, chose to exclude pregnancy-related disabilities from the scope of the program's operation. Four women who had experienced a period of pregnancy-related disability challenged their exclusion from the program's benefits, and a three-judge district court found such exclusion violated the Equal Protection Clause. However, Justice Stewart speaking for the majority, adopted the "rationally supportable" standard of justification,[3] and held that the state's legitimate interest in seeking to protect the program's financial integrity and self-supporting character allowed it to address "itself to the phase of the problem which seems most acute to the legislative mind . . ."[4] Thus, cast in terms of the administration of a social welfare program, under the Court's interpretation the line drawn by the California legislature was between pregnancy-related disabilities and other disabilities, not between male and female employees. The Court peripherally amplified in footnote 20 its basis for concluding that disability and not sex was the line drawn by California legislature:

> "The dissenting opinion to the contrary, this case is thus a far cry from cases like Reed v. Reed, 404 U.S. 71 (1971), and Frontiero v. Richardson, 411 U.S. 677 (1973), involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition — pregnancy — from the list of compensable disabilities. While it is true that only women can become pregnant,

3. 417 U.S., at 495.

4. *Id.* (citing *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955)).

> it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in Reed, supra, and Frontiero, supra. Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other, *lawmakers are constitutionally free* to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition."
>
> 417 U.S. at 496, n. 20 (emphasis added)

It is apparent from our reading of footnote 20 that the Court's observations are made in the particular and narrow confines of the state's power to draw flexible and pragmatic lines in the social welfare area. To conclude that the Court's footnote is dispositive of an action brought under Title VII would be to ignore the traditional doctrine that the precedential value of a decision should be limited to the four corners of the decisions's factual setting.[5] The reasoning and policy behind this doctrine is readily appreciated when *Aiello* is compared with the facts in this case. Here, the question is whether the exclusion by a private employer of pregnancy-related disabilities from its sick leave and seniority program is a violation of a congressional statute, essentially, a dissimilar question from the issue before the *Aiello* Court — whether a legislative classification dividing disabilities into two classes for the purposes of a disability income protection program finds a rational

5. *Cohens* v. *Virginia*, 6 Wheaton (19 U.S.) 264, 399-400 (1821); *Armour & Co.* v. *Wantock*, 323 U.S. 126, 132-133 (1944); *rehearing denied*, 323 U.S. 818 (1945). *Accord*, *Communications Workers of America* v. *American Telephone & Telegraph Co.*, *supra*, slip opinion, at 2556-57.

basis. It is this very degree of dissimilarity that rejects a blind adherence to footnote 20. To import a different effect to footnote 20 would be to extend the impact of *Aiello* beyond its intended effect. It would appear harsh to read into footnote 20 that the Court expected, in passing on the propriety of a legislative classification under the Equal Protection Clause, to preclude all future discussion of statutory interpretation under a relatively new act such as the Civil Rights Act of 1964. Unless squarely faced with the Act, the Court has evidenced a reluctance to examine its parameters or the interpretive functions of the Equal Employment Opportunity Commission (E.E.O.C.).[6] While mindful of the Court's language in footnote 20, caution dictates that we not make it a talisman for Title VII actions.[7]

E.E.O.C. Guidelines

Turning from *Aiello* for guidance, it is logical that we should look to the agency charged with the administration of Title VII. In this regard, 29 C.F.R. § 1604.10(b) provides:

> "(b) Disabilities cause or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, and accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities."

6. *See Cleveland Bd. of Educ.* v. *LaFleur*, 414 U.S. 632, 640, n. 8, 653 n. 2 (Powell, J., concurring) (1974). In this vein, see also the remarks of Judge Bryan in *Communications Workers* v. *American Tel. & Telegraph Co., supra*, at footnote 11.

7. It is urged that because E.E.O.C. argued in its amicus brief in *Aiello* that the Court's holding would affect similar actions brought under Title VII and that because the Equal Protection issue was decided against the E.E.O.C., the Court intended its holding to extend to Title VII actions. Absent any reference at all to Title VII in *Aiello*, this argument, if adopted, would impermissibly distort the principle of *stare decisis*.

We are urged in this case to reject the lessons of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Phillips* v. *Martin Marietta Corp.*, 400 U.S. 542, 545 (1971) (Marshall, J., concurring), which accord deference to the Commission's interpretation, under the authority of the Supreme Court's recent decision in *Esponoza* v. *Farah Manufacturing Co.*, 414 U.S. 86, 96 (1973). There, the Court, rejecting the Commission's regulation that discrimination on the basis of citizenship is tantamount to discrimination on the basis of national origin, noted that the agency had formerly held a different view, but, most importantly, the Court emphasized that "application of the guideline would be inconsistent with an obvious congressional intent . . ."[8] Unlike the situation before the Court in *Espinoza*, we do not have before us any legislative history indicating that the E.E.O.C. interpretation conflicts with the congressional intent. We are not in a position to say that the agency position contravenes the letter or spirit of the Act.[9] Thus,

8. 414 U.S. at 94.

9. It is similarly suggested that E.E.O.C.'s guidelines are in variance with the Wage and Hour Administrator's policy toward pregnancy under the Equal Pay Act, 29 U.S.C. § 206(d); 29 C.F.R. § 800.100, and the Office of Federal Contract Compliance's interpretation of Executive Order 11246, 3 C.F.R. 172, which permits a distinction to be drawn between pregnancy and other disabilities. However, here, we seek to interpret Title VII and not the Equal Pay Act or Executive Order 11246.

absent clear indicia in the form of legislative history that the agency interpretation is unreasonable or unnatural, we must defer to the Commission's construction of the statute as articulated under 29 C.F.R. § 1604.10(b).[10]

We note that in holding that disparate treatment between pregnancy leave and other sick leave constitutes a violation of Title VII, we reaffirm this Court's former decision in *Farkas* v. *Southwestern City School District*, 506 F.2d 1400 (6th Cir. 1974), where the District Court was affirmed and the conclusion reached that exclusion of normal pregnancy from a sick leave program constituted sex discrimination under Title VII. We are not persuaded that that position is incorrect. Though the legislative history of Title VII contains no explicit reference to sex discrimination, we learn from its declaration of policy that its principal aim was to eliminate artificial barriers that fostered disparate treatment, absent a compelling and founded reason for such disparity.

Appellant contends that the test of the validity of an employment policy under Title VII is not different from the test of validity under the Fourteenth Amendment.[11] This argument, however, presupposes that the lawful scope of employment policies under the former Act is coextensive with the latter constitutional provision. We believe that the better approach permits Title VII under the Commerce Clause to extend beyond the reach of the Equal Protection Clause. *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964); *Katzenbach* v. *McClung*, 379 U.S.

10. *Accord, Gilbert* v. *General Electric Co., supra; Wetzel* v. *Liberty Mutual Insurance Co., supra; Communications Workers of America* v. *American T.&T. Co., supra; Holthaus* v. *Compton, supra; Vineyard* v. *Hollister Elementary School District*, 64 F.R.D. 580 (N.D.Cal. 1974).

11. *Accord, U. S.* v. *Chesterfield County School District*, 484 F.2d 70, 73 (4th Cir. 1973).

294.[12] Otherwise, Title VII's effective reach would be limited by the decisions of the Supreme Court, a result effectively curtailing its implementation.

Relief

The District Court, finding that Nashville Gas' policy violated the provisions of 42 U.S.C. § 2000e-5, ordered that plaintiff recover sick leave benefits that should have been paid during her maternity leave; back wages from March 14, 1973, including any across the board increases, and reduced by temporary wages and unemployment insurance; reinstatement with full seniority and recovery of reasonable attorney fees.

Under the guidelines of *Meadows* v. *Ford Motor Company*, 43 U.S.L.W. 2332 (1975), and *Head* v. *Timken Roller Bearing Company*, 486 F.2d 870 (6th Cir. 1973), we find the District Court's relief appropriate.

The judgment of the District Court is affirmed.

12. *Accord, Communications Workers* v. *American Telephone & Telegraph*, slip opinion at 2562. *See also, Id.* at n. 12. It is submitted that an anomaly would exist if public and private employers were held to different standards under Title VII and the Fourteenth Amendment cases. It would appear, however, that any disparity would have been mitigated by inclusion of "governments" within the meaning of person under the 1972 Amendments. 42 U.S.C. § 2000e.